

## APPENDIX

Signed by Governor  
(May 12, 1983)

H.C.R. 235  
H.C.R. 234  
H.C.R. 196  
H.C.R. 193  
H.C.R. 187  
H.C.R. 186  
H.C.R. 178  
H.C.R. 156  
H.C.R. 139

Sent to Governor  
(May 13, 1983)

S.C.R. 79  
S.C.R. 96  
S.B. 341  
S.B. 367  
S.B. 501  
S.B. 703  
S.B. 737  
S.B. 761  
S.B. 817  
S.B. 826  
S.B. 1050

(May 16, 1983)

S.C.R. 111  
S.C.R. 112  
S.B. 98  
S.B. 355  
S.B. 384 (Again sent)  
S.B. 623  
S.B. 682  
S.B. 1112

**SIXTY-NINTH DAY**  
(Tuesday, May 17, 1983)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

A quorum was announced present.

The Reverend John Berkley, Memorial United Methodist Church, Austin, offered the invocation as follows:

Our Heavenly Father, May heart and mind so unite in the decisions of this body, that each foot touching Texas soil will feel blessed by Your hand of grace. Amen!

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

#### **CO-AUTHOR OF SENATE BILL 784**

On motion of Senator Traeger and by unanimous consent, Senator Leedom will be shown as Co-author of S.B. 784.

#### **REPORTS OF STANDING COMMITTEES**

Senator Sharp, Acting Chairman, submitted the following report for the Committee on Health and Human Resources:

S.B. 1347 (Amended)  
H.B. 229  
H.B. 893  
S.R. 564  
C.S.S.B. 1397 (Read first time)  
C.S.S.B. 1346 (Read first time)

Senator Santiesteban submitted the following report for the Committee on Natural Resources:

H.B. 525  
H.B. 1368  
S.B. 1399  
S.B. 1404  
H.B. 1766 (Amended)  
H.B. 1840  
H.B. 2292  
S.B. 751  
H.B. 1279  
C.S.H.B. 501 (Read first time)

Senator Farabee submitted the following report for the Committee on State Affairs:

H.B. 4 (Amended)  
S.C.R. 106  
H.B. 2183  
S.C.R. 57  
H.B. 355  
H.B. 475  
H.B. 741  
H.B. 706  
H.B. 998  
H.B. 1293  
H.B. 1678  
H.B. 1967  
C.S.H.B. 1618 (Read first time)

Senator Mauzy submitted the following report for the Committee on Jurisprudence:

H.B. 1650

**H.B. 1884****H.B. 1883****H.B. 2106****SENATE BILLS AND RESOLUTIONS ON FIRST READING**

On motion of Senator Montford and by unanimous consent, the following bills and resolutions were introduced, read first time and referred to the Committee indicated:

**S.R. 623** by Sarpalius Administration  
Directing the Senate Committee on Natural Resources to conduct an interim study on certain issues relating to Texas agriculture.

**S.R. 628** by Parmer Administration  
Creating an interim committee to study food and nutrition needs and services for all Texas residents.

**S.C.R. 117** by Doggett Administration  
Granting Dan H. Marshall II and Winifred Mildred Marshall Camilleri permission to sue the State.

**S.C.R. 119** by Montford Administration  
Granting Charles Helms and Shirley Helms permission to sue the State.

**S.C.R. 120** by Brown Administration  
Requesting the Division of emergency management of the Office of the Governor to consider the prompt funding of the Public Information Emergency System.

**S.C.R. 122** by Edwards Administration  
Granting John B. McDonald, Jerry Calhoun, J. Christopher Kolstad, Bobby Reed and Joe Cannon permission to sue the State.

**S.C.R. 123** by Blake Administration  
Granting the Lieutenant Governor, Speaker of the House of Representatives, President Pro Tempore or Speaker Pro Tempore authority to create special joint interim committees during the period from May 31, 1983 to January 8, 1985.

**S.C.R. 124** by Farabee State Affairs  
Directing the Criminal Justice Policy Council to establish a Commission on Sentencing Practices and Procedures.

**S.B. 1423** by Montford Health and Human Resources  
Relating to the jurisdiction of certain proceedings brought under the Texas Mental Health Code.

**S.B. 1424** by Lyon Natural Resources  
Relating to the right of eminent domain for the purpose of obtaining access to land dedicated to the Permanent School Fund.

**S.B. 1425** by Brown Economic Development  
Relating to the amendment of a condominium declaration and the authority of a condominium association to alter or destroy a unit or a limited common element.

**S.B. 1426** by Montford Intergovernmental Relations  
Relating to the establishment and powers of a juvenile board in Terry County.

**S.B. 1427** by Montford Intergovernmental Relations  
Relating to establishment and powers of a juvenile board in Yoakum County.

**SENATE CONCURRENT RESOLUTION 121**

Senator Blake offered the following resolution:

WHEREAS, During this regular session of the 68th Legislature, Texas legislators have had a volunteer medical service made available to them; and

WHEREAS, The service is sponsored by the Texas Academy of Family Physicians and the Texas Medical Association; and

WHEREAS, Texas Academy of Family Physicians members from across the State have volunteered for a day at a time to be present at the first aid station on the ground floor of the Capitol; and

WHEREAS, The Texas Academy of Family Physicians members have traveled to Austin at their own expense and received no compensation from time on the job; and

WHEREAS, The first aid station is equipped for emergency and first aid use by the State Health Department; and

WHEREAS, Nurse Betty Lindeman has been loaned from the Texas Department of Human Resources and has done an outstanding job; and

WHEREAS, There have been several real emergencies during this session in which prompt treatment and care have benefited members, staff, and visitors to the Capitol and aided their recovery from several ailments and accidents; and

WHEREAS, L. W. Snider, M.D., of Garrison, Texas has coordinated the operation and given countless hours of his valuable time for this project; now, therefore, be it

RESOLVED by the Senate of the 68th Legislature, the House of Representatives concurring, That the Members of the 68th Legislature do express their thanks for and appreciation to the Texas Academy of Family Physicians, the Texas Medical Association, the Texas Department of Human Resources, L. W. Snider, M.D., Nurse Betty Lindeman, and the participating physicians of the Texas Academy of Family Physicians; and, be it further

RESOLVED, That an appropriate certificate be printed for the signature of the Lieutenant Governor, the Speaker of the House of Representatives, and the Governor designating the physicians who participated in the above "Capitol Physician" program and that an original of same be mailed to each doctor; and, be it further

RESOLVED, That Betty Lindeman, R.N., be designated as "Capitol Nurse" and that an appropriate certificate signed by the Lieutenant Governor, the Speaker of the House of Representatives, and the Governor be given to her for her unselfish dedication; and, be it further

RESOLVED, That a copy of the resolution be prepared for the Texas Academy of Family Physicians, the Texas Medical Association, the Texas Department of Health, the Texas Department of Human Resources, Betty Lindeman, R.N., and L. W. Snider, M.D., as a token of the esteem and thanks of the legislature and the citizens of Texas for this outstanding, beneficial, and unselfish service rendered to the state.

The resolution was read.

On motion of Senator Blake and by unanimous consent, the resolution was considered immediately and was adopted.

**HOUSE BILLS AND RESOLUTIONS ON FIRST READING**

The President announced that over 150 House bills and resolutions would be read and referred to Committees at the conclusion of this morning's session.

**SENATE BILL 109 WITH HOUSE AMENDMENT**

Senator Vale called **S.B. 109** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.  
Committee Amendment No. 1 - Wright

Amend **S.B. 109** as follows:

Amend Section 4.04, Subsection (a) by striking Subsection (a) in its entirety and substituting in lieu thereof the following:

"(a) The director shall be a physician. Non-physicians serving as directors on the effective date of this act may continue to serve in that capacity."

Amend Section 4.07, Subsection (c) by striking Subsection (c) in its entirety and substituting in lieu thereof the following:

"(c) The governing body of an incorporated municipality or the commissioner's court of a county shall appoint a physician as a director of the local health department subject to the approval of the board. Non-physicians serving as directors on the effective date of this act may continue to serve in that capacity."

The amendment was read.

Senator Vale moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 15, Nays 7.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Harris, Henderson, Howard, Kothmann, Montford, Parker, Parmer, Vale, Whitmire, Williams.

Nays: Doggett, Edwards, Leedom, Lyon, Mauzy, Sarpalius, Sims.

Absent: Glasgow, Jones, McFarland, Santiesteban, Sharp, Traeger, Truan, Uribe, Washington.

**SENATE BILL 1269 WITH HOUSE AMENDMENTS**

Senator Sarpalius called **S.B. 1269** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.  
Committee Amendment No. 1 - Staniswalis

Amend **S.B. 1269** by striking the word "shall" on page 8, line 12, and substituting the word "may."

Committee Amendment No. 2 - Staniswalis

Amend **S.B. 1269** by striking the words "on the board's approval." on page 16, line 8, and substituting therefor "only with the approval of a two-thirds vote of the board members present at a meeting of the board."

The amendments were read.

Senator Sarpalius moved to concur in the House amendments.

The motion prevailed.

**SENATE BILL 471 WITH HOUSE AMENDMENT**

Senator Mauzy called **S.B. 471** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 - G. Hill

Amend S.B. 471 on page 1, lines 17 and 18, by striking the words "and is located in more than two counties"; and on page 1, line 20 by striking the word "shall" and substituting the word "may"; and on line 24 by adding a period (.) at the end of the word "office" and striking the words "until a nominee is acceptable to and appointed by the governing body or bodies." on lines 24 and 25 and substituting the words "The governing body or bodies shall then make appointments from these and any other nominees offered by members of the governing body or bodies."

The amendment was read.

Senator Mauzy moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent: Santiesteban, Sharp, Traeger, Truan, Washington.

#### SENATE BILL 295 WITH HOUSE AMENDMENT

Senator Caperton called S.B. 295 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 - Schlueter

Amend S.B. 295, Section 1 by striking the words and figures "Twenty Million Dollars (\$20,000,000)" wherever such words appear in Section 2 of Article 4 of the Texas Banking Code of 1943, and inserting in lieu thereof the following words and figures:

"One Hundred Million Dollars (\$100,000,000)"

Senator Doggett requested a full reading of the amendment.

The Secretary of the Senate read the amendment in its entirety.

Senator Caperton moved to concur in the House amendment.

The motion prevailed.

#### SENATE BILL 436 WITH HOUSE AMENDMENT

Senator Jones called S.B. 436 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Glossbrenner

Amend S.B. 436 by striking the new language on line 13 of page 1.

"or practice in any manner"

The amendment was read.

Senator Jones moved to concur in the House amendment.

The motion prevailed.

**SENATE BILL 387 WITH HOUSE AMENDMENT**

Senator McFarland called S.B. 387 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.  
Committee Amendment No. 1 - Delco

Amend S.B. 387 by striking the word "shall" on line 10 page 1, and add in its place the word "may".

The amendment was read.

Senator McFarland moved to concur in the House amendment.

The motion prevailed.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 612 ADOPTED**

Senator McFarland called from the President's table the Conference Committee Report on S.B. 612 (The Conference Committee Report having been filed with the Senate and read on Thursday, May 12, 1983.)

On motion of Senator McFarland, the Conference Committee Report was adopted.

**SENATE BILL 1425 REREFERRED**

On motion of Senator Brown and by unanimous consent, S.B. 1425 was withdrawn from the Committee on Economic Development and rereferred to the Committee on State Affairs.

**VOTE ON FINAL PASSAGE OF  
SENATE BILL 784 RECONSIDERED**

On motion of Senator Traeger and by unanimous consent, the vote by which S.B. 784 was finally passed was reconsidered.

Question—Shall S.B. 784 be finally passed?

**SENATE RULE 103 SUSPENDED**

On motion of Senator Blake and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Administration might consider the following resolutions at 4:00 o'clock p.m. today.

S.C.R. 117

H.C.R. 105

S.C.R. 120

**SENATE BILL 149 WITH HOUSE AMENDMENTS**

Senator Henderson called S.B. 149 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.  
Floor Amendment No. 1 - Messer

Amend S.B. 149 as amended as follows:

(1) On page 2, strike the sentence beginning on line 11 and substitute: "All sums of money paid to the Savings and Loan Department from all sources shall be paid to the State Treasurer to be deposited to the credit of a special fund to be

known as the Savings and Loan Department Expense Fund. Income earned on money deposited to the credit of the fund shall be deposited to that fund. All expenses incurred by the Savings and Loan Department shall be paid only from this Savings and Loan Department Expense Fund."

(2) Insert the following on page 2 after the word "fund" on line 22: "Not later than June 1 of each even-numbered year, the Commissioner shall submit to the Finance Commission a proposed budget for operation of the Savings and Loan Department for the next state fiscal biennium. The Commission shall review the proposed budget and, not later than July 31, of that year, approve the budget with such amendments as the Commission considers appropriate. During each regular legislative session the Commission shall submit certified copies of the approved budget to the Legislature. In appropriating money in the Savings and Loan Department Expense Fund, the Legislature may amend the budget as it considers appropriate. The Commission shall amend the budget as necessary to conform the budget to legislative appropriations."

The State Treasurer may disburse money from the fund only on the written authorization of the Commissioner, and only in accordance with the current Savings and Loan Department budget approved by the Finance Commission and by the Legislature in the General Appropriations Act or other applicable statutes as provided by this Act.

(3) Strike Section 11 of the bill as amended and substitute the following:

SECTION 11. (a) Except as provided by Subsection (b) and (c) of this section, this Act takes effect September 1, 1983.

(b) Section 1 of this Act takes effect September 1, 1985, except that for purposes of preparation by the Savings and Loan Commissioner of a proposed budget for the 1985-1987 state fiscal biennium and action on that proposed budget by the Finance Commission, Section 1 takes effect January 1, 1984. All funds in the custody of the Savings and Loan Department that are subject to Article 5, Chapter II, the Texas Banking Code of 1943 (Article 342-205, Vernon's Texas Civil Statutes), on September 1, 1985, shall be transferred to the State Treasurer on that date for deposit to the credit of the Savings and Loan Department Expense Fund.

(c) Section 2, 3, 4, 6, 8, 9, 10 and 11 of this Act shall be effective when this Act is signed by the Governor.

Floor Amendment No. 2 - Ragsdale

Amend S.B. 149, SECTION 2, page 5, by adding a new subsection (r) to read as follows:

(r) The Commissioner shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plans shall include:

(1) a comprehensive analysis of all the agency's workforce by race, sex, ethnic origin, class of position, and salary or wage;

(2) plans for recruitment, evaluation, selection, appointment, training, promotion and other personnel policies;

(3) steps reasonably designed to overcome any identified underutilization of minorities and women in the agency's workforce;

and, (4) objectives and goals, timetables for the achievement of the objectives and goals, and assignments of responsibility for their achievement.

The plans shall be filed with the Governor's office within sixty days of the effective date of this Act, cover an annual period and be updated at least annually. Progress reports shall be submitted to the Governor's office within thirty days of



November 1 and April 1 of each year and shall include the steps the agency has taken within the reporting period to comply with these requirements.

Floor Amendment No. 3 - Russell

Amend S.B. 149 as amended by adding after Section 10 the following Section 11 and renumbering the subsequent sections accordingly.

Section 10. The Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes) is amended by adding the following section:

Section 2.15 INCORPORATION TO TAKE OVER BUSINESS OF AN EXISTING ASSOCIATION. (a) Application for a charter for a savings and loan association for the sole purpose of purchasing the assets, assuming the liabilities (other than its liability to stockholders as such) and continuing the business of any association deemed by the Commissioner to be in an unsafe condition, (hereinafter referred to as the Reorganizing Association) may be made to the Commissioner.

(b) The application for such a charter shall consist of such data and information as the Commissioner may require, or that may be required by, duly promulgated rules and regulations of the Commissioner and the Savings and Loan Section of the Finance Commission of Texas. The capitalization of such an association shall be in an amount set by the Commissioner sufficient to carry out the purposes for which the charter is requested.

(c) The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) shall not apply to such an application.

(d) If the Commissioner finds that the business of the Reorganizing Association can be effectively continued under the proposed charter, that the reorganization is in the best interest of the savers, depositors, creditors, and stockholders, if any, of the Reorganizing Association, and the public in general, he shall state his findings in writing and issue under his official seal, a certificate of incorporation, whereupon the proposed association shall be a corporate body, and a continuation of the Reorganizing Association subject to all its liabilities, obligations, duties and relations, save and except its liability to stockholders as such, and may exercise all the powers of a savings and loan association under the laws of this state.

The amendments were read.

Senator Henderson moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 149 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Henderson, Chairman; Howard, Caperton, McFarland and Edwards.

#### PROCLAMATION BY THE GOVERNOR

The following Proclamation by the Governor was read and was filed with the Secretary of the Senate.

**PROCLAMATION  
BY THE  
GOVERNOR OF THE STATE OF TEXAS**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

May 16, 1983

Pursuant to Article IV, Section 14 of the Constitution of Texas, I hereby veto **S.B. 454** because of the following policy objection:

The best interests of the people of the Fort Bend County region in addressing the problem of subsidence would be served through participation in an existing regional district.

Therefore, I veto **S.B. 454**.

Respectfully submitted,

/s/Mark White  
Governor of Texas

**HOUSE BILL 2437 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 2437**, Relating to a pilot program for experimental liver transplants for infants and small children.

The bill was read second time and was passed to third reading.

**RECORD OF VOTES**

Senators Brown, Howard and Jones asked to be recorded as voting "Nay" on the passage of the bill to third reading.

**HOUSE BILL 2437 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2437** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 22, Nays 3.

Yeas: Blake, Brooks, Doggett, Glasgow, Harris, Henderson, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sharp, Sims, Traeger, Truan, Vale, Whitmire, Williams.

Nays: Brown, Howard, Jones.

Absent: Caperton, Edwards, Farabee, Sarpalius, Uribe, Washington.

The bill was read third time and was passed by the following vote: Yeas 22, Nays 3. (Same as previous roll call)

**HOUSE CONCURRENT RESOLUTION 246 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

**H.C.R. 246**, Urging the Texas Department of Human Resources to give special consideration to Ashley Bailey in regard to a liver transplant.

The resolution was read second time and was adopted.

### RECORD OF VOTE

Senator Howard asked to be recorded as voting "Nay" on the adoption of the resolution.

### MESSAGE FROM THE HOUSE

House Chamber  
May 17, 1983

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 306**, Relating to establishment of and funding for a motorcycle operator training and safety program.

**H.B. 1186**, Relating to adoption of a nonsubstantive revision of the statutes relating to civil procedure and civil remedies and liabilities.

**H.B. 1726**, Relating to rights of the elderly.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

### HOUSE BILL 1438 ON THIRD READING

Senator Henderson moved to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

**H.B. 1438**, Relating to the removal of certain businesses from treatment as a consumer under the Deceptive Trade Practices-Consumer Protection Act.

The motion prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Brooks, Brown, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Leedom, Lyon, McFarland, Montford, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Vale, Whitmire, Williams.

Nays: Blake, Caperton, Doggett, Edwards, Kothmann, Mauzy, Parker, Truan, Uribe, Washington.

The bill was read third time.

Senator Doggett offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1438** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 17.42, Business & Commerce Code, is amended to read as follows:

Section 17.42. **WAIVERS: PUBLIC POLICY.** Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a business consumer ~~[other than the State of Texas or any political subdivision thereof with assets of at least \$25,000,000.00 or more at the time of such transactions, acts, or practices]~~ with \$10,000,000.00 in tangible assets at the time of the contract may, by written

contract, waive the provisions of this subchapter, other than Section 17.55A. Such waiver shall be without effect unless it is conspicuous and is approved and signed by an attorney representing the business consumer at the time of the transaction who, at the time of such attorney's approval and signing, is licensed to practice law by the Supreme Court of the State of Texas.

SECTION 2. Section 17.45, Business & Commerce Code, is amended by adding subdivision (10) to read as follows:

(10) "Business Consumer" means an individual, partnership, or corporation who seeks or acquires by purchase or lease any goods or services for commercial or business use. The term does not include any governmental entity of the United States or of the State of Texas or any municipality located in the State of Texas.

SECTION 3. Section 17.45, Business & Commerce Code, is amended by adding subdivision (11) to read as follows:

(11) "Tangible Assets" means tangible chattels or real property owned by a business consumer. Such term does not include good will or proprietary trade secrets.

SECTION 4. Nothing in this act shall affect, procedurally or substantively, a cause of action arising in whole or in part prior to the effective date of this Act.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and imperative public necessity that the constitutional rules requiring bills to be read on three several days in each House be suspended, and this rule is hereby suspended, and that this bill take effect according to its terms, and it is so enacted.

The amendment was read.

(Senator Brooks in Chair)

Senator Washington offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend the pending amendment to H.B. 1438 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 17.42, Business & Commerce Code, is amended to read as follows:

Section 17.42. **WAIVERS: PUBLIC POLICY.** Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a business consumer [other than the State of Texas or any political subdivision thereof with assets of at least \$25,000,000.00 or more at the time of such transactions, acts, or practices] with \$10,000,000.00 in net tangible assets at the time of the contract may, by written contract, waive the provisions of this subchapter, other than Section 17.55A. Such waiver shall be without effect unless it is conspicuous and is approved and signed by an attorney representing the business consumer at the time of the transaction who, at the time of such attorney's approval and signing, is licensed to practice law by the Supreme Court of the State of Texas.

SECTION 2. Section 17.45, Business & Commerce Code, is amended by adding subdivision (10) to read as follows:

(10) "Business Consumer" means an individual, partnership, or corporation who seeks or acquires by purchase or lease any goods or services for commercial or business use. The term does not include any governmental entity of the United States or of the State of Texas or any municipality located in the State of Texas.

SECTION 3. Section 17.45, Business & Commerce Code, is amended by adding subdivision (11) to read as follows:

(11) "Tangible Assets" means tangible chattels or real property owned by a business consumer. Such term does not include good will or proprietary trade secrets.

SECTION 4. Nothing in this act shall affect, procedurally or substantively, a cause of action arising in whole or in part prior to the effective date of this Act.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and imperative public necessity that the constitutional rules requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this bill take effect according to its terms, and it is so enacted.

The amendment to Floor Amendment No. 1 was read and was adopted.

(President in Chair)

Question recurring on adoption of Floor Amendment No. 1 as amended, Floor Amendment No. 1 as amended failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Blake, Caperton, Doggett, Edwards, Kothmann, Mauzy, Truan, Uribe, Vale, Washington.

Nays: Brooks, Brown, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Whitmire, Williams.

The bill was finally passed by the following vote: Yeas 21, Nays 10.

Yeas: Brooks, Brown, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Leedom, Lyon, McFarland, Montford, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Vale, Whitmire, Williams.

Nays: Blake, Caperton, Doggett, Edwards, Kothmann, Mauzy, Parker, Truan, Uribe, Washington.

#### MESSAGE FROM THE HOUSE

House Chamber  
May 17, 1983

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a Conference Committee on S.B. 244. House conferees: Tejeda, Chairman; Rudd, Turner, Madla, Messer.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on State Affairs, Subcommittee on Nominations:

Austin, Texas  
May 17, 1983

TO THE SENATE OF THE SIXTY-EIGHTH LEGISLATURE, REGULAR  
SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

**TO BE MEMBERS OF THE STATE BOARD OF MEDICAL EXAMINERS:**

For a term to expire April 13, 1989:

**DR. DREW DAVIS WILLIAMS**

1217 Kilgore Road

Baytown, Texas 77520

(Dr. Williams is replacing Dr. Max Camille Butler of Houston, Harris County, Texas, whose term expired.)

For a term to expire April 13, 1989:

**JAMES G. BERTMAN**

513 San Jacinto

Liberty, Texas 77575

(Mr. Bertman is replacing Mr. Clyde H. Alexander, II of Trinidad, Henderson County, Texas, whose term expired.)

For a term to expire April 13, 1989:

**DR. SUZANNE AHN**

8826 Lakemont

Dallas, Texas 75209

(Dr. Ahn is replacing Dr. Albert Bryan Spires, Jr. of Austin, Travis County, Texas, whose term expired.)

For a term to expire April 13, 1989:

**DR. SOL FORMAN**

2705 9 Mile Road

Galveston, Texas 77551

(Dr. Forman is replacing Dr. Paul J. Cunningham of Galveston, Galveston County, Texas, whose term expired.)

Respectfully submitted,

/s/Mark White

Governor of Texas

**BILLS AND RESOLUTIONS SIGNED**

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

<b>S.C.R. 6</b>	<b>S.B. 1096</b>
<b>S.C.R. 38</b>	<b>S.B. 1198</b>
<b>S.C.R. 58</b>	<b>S.B. 1207</b>
<b>S.C.R. 97</b>	<b>S.B. 1222</b>
<b>S.C.R. 103</b>	<b>S.B. 1275</b>
<b>S.B. 38</b>	<b>S.B. 1285</b>
<b>S.B. 59</b>	<b>H.B. 15</b>
<b>S.B. 91</b>	<b>H.B. 102</b>
<b>S.B. 162</b>	<b>H.B. 103</b>
<b>S.B. 274</b>	<b>H.B. 267</b>
<b>S.B. 280</b>	<b>H.B. 410</b>
<b>S.B. 284</b>	<b>H.B. 480</b>
<b>S.B. 335</b>	<b>H.B. 532</b>
<b>S.B. 353</b>	<b>H.B. 618</b>
<b>S.B. 379</b>	<b>H.B. 672</b>
<b>S.B. 541</b>	<b>H.B. 680</b>
<b>S.B. 544</b>	<b>H.B. 719</b>

S.B. 579	H.B. 722
S.B. 613	H.B. 853
S.B. 732	H.B. 962
S.B. 781	H.B. 1111
S.B. 786	H.B. 1229
S.B. 809	H.B. 1427
S.B. 967	H.B. 1440
S.B. 971	H.B. 1441
S.B. 996	H.B. 1487
S.B. 1018	H.B. 1775
S.B. 1020	H.B. 1828
S.B. 1029	H.B. 1861
S.B. 1031	H.B. 1958
S.B. 1032	H.B. 2018
S.B. 1064	H.C.R. 8

#### MESSAGE FROM THE HOUSE

House Chamber  
May 17, 1983

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

C.S.S.B. 232, Relating to the continuation of the Public Utility Commission of Texas and the regulation of utilities. (With amendments)

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### SENATE RULE 103 SUSPENDED

On motion of Senator Mauzy and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider H.J.R. 70 today.

#### SENATE RULE 103 SUSPENDED

On motion of Senator Traeger and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Intergovernmental Relations might consider the following bills at 3:00 o'clock p.m. today:

S.B. 1426  
S.B. 1427  
S.B. 1375  
H.B. 828  
H.B. 2371  
S.B. 1418

#### SENATE RULE 103 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Health and Human Resources might consider H.B. 1480.

**HOUSE BILLS AND RESOLUTIONS ON FIRST READING**

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

- H.B. 21, To Committee on Education.
- H.B. 30, To Committee on Jurisprudence.
- H.B. 42, To Committee on Jurisprudence.
- H.B. 158, To Committee on Jurisprudence.
- H.B. 178, To Committee on Education.
- H.B. 179, To Committee on Economic Development.
- H.B. 223, To Committee on Jurisprudence.
- H.B. 224, To Committee on Jurisprudence.
- H.B. 310, To Committee on Intergovernmental Relations.
- H.B. 411, To Committee on State Affairs.
- H.B. 413, To Committee on Jurisprudence.
- H.B. 487, To Committee on Natural Resources.
- H.B. 500, To Committee on Health and Human Resources.
- H.B. 576, To Committee on Education.
- H.B. 594, To Committee on Intergovernmental Relations.
- H.B. 718, To Committee on State Affairs.
- H.B. 725, To Committee on State Affairs.
- H.B. 742, To Committee on State Affairs.
- H.B. 775, To Committee on Jurisprudence.
- H.B. 788, To Committee on Education.
- H.B. 848, To Committee on Education.
- H.B. 855, To Committee on State Affairs.
- H.B. 882, To Committee on Jurisprudence.
- H.B. 895, To Committee on Jurisprudence.
- H.B. 908, To Committee on Intergovernmental Relations.
- H.B. 949, To Committee on Education.
- H.B. 956, To Committee on Jurisprudence.
- H.B. 1061, To Committee on Jurisprudence.
- H.B. 1085, To Committee on Intergovernmental Relations.
- H.B. 1100, To Committee on State Affairs.
- H.B. 1106, To Committee on Intergovernmental Relations.
- H.B. 1108, To Committee on Jurisprudence.
- H.B. 1118, To Committee on Jurisprudence.
- H.B. 1178, To Committee on Jurisprudence.
- H.B. 1180, To Committee on State Affairs.
- H.B. 1208, To Committee on Jurisprudence.
- H.B. 1210, To Committee on Intergovernmental Relations.
- H.B. 1269, To Committee on State Affairs.
- H.B. 1282, To Committee on Finance.
- H.B. 1291, To Committee on Jurisprudence.
- H.B. 1302, To Committee on Natural Resources.
- H.B. 1316, To Committee on Finance.
- H.B. 1322, To Committee on Intergovernmental Relations.
- H.B. 1367, To Committee on Finance.
- H.B. 1372, To Committee on Economic Developmental.
- H.B. 1378, To Committee on Health and Human Resources.
- H.B. 1401, To Committee on State Affairs.
- H.B. 1408, To Committee on Natural Resources.
- H.B. 1415, To Committee on Education.
- H.B. 1420, To Committee on State Affairs.



- H.B. 1421, To Committee on Intergovernmental Relations.  
H.B. 1428, To Committee on Finance.  
H.B. 1444, To Committee on Jurisprudence.  
H.B. 1451, To Committee on Economic Development.  
H.B. 1454, To Committee on State Affairs.  
H.B. 1473, To Committee on Intergovernmental Relations.  
H.B. 1481, To Committee on Intergovernmental Relations.  
H.B. 1502, To Committee on Finance.  
H.B. 1511, To Committee on Natural Resources.  
H.B. 1517, To Committee on State Affairs.  
H.B. 1536, To Committee on Economic Development.  
H.B. 1550, To Committee on Education.  
H.B. 1555, To Committee on State Affairs.  
H.B. 1575, To Committee on Economic Development.  
H.B. 1585, To Committee on Natural Resources.  
H.B. 1599, To Committee on Health and Human Resources.  
H.B. 1603, To Committee on Finance.  
H.B. 1608, To Committee on State Affairs.  
H.B. 1655, To Committee on Finance.  
H.B. 1685, To Committee on Health and Human Resources.  
H.B. 1701, To Committee on Education.  
H.B. 1704, To Committee on Education.  
H.B. 1706, To Committee on Health and Human Resources.  
H.B. 1710, To Committee on Economic Development.  
H.B. 1712, To Committee on State Affairs.  
H.B. 1719, To Committee on Natural Resources.  
H.B. 1733, To Committee on Intergovernmental Relations.  
H.B. 1745, To Committee on State Affairs.  
H.B. 1750, To Committee on Intergovernmental Relations.  
H.B. 1760, To Committee on Jurisprudence.  
H.B. 1769, To Committee on Natural Resources.  
H.B. 1792, To Committee on Economic Development.  
H.B. 1831, To Committee on Finance.  
H.B. 1858, To Committee on Intergovernmental Relations.  
H.B. 1867, To Committee on Economic Development.  
H.B. 1875, To Committee on State Affairs.  
H.B. 1876, To Committee on State Affairs.  
H.B. 1914, To Committee on Natural Resources.  
H.B. 1933, To Committee on Jurisprudence.  
H.B. 1934, To Committee on Intergovernmental Relations.  
H.B. 1947, To Committee on Jurisprudence.  
H.B. 1956, To Committee on Economic Development.  
H.B. 1964, To Committee on Natural Resources.  
H.B. 1966, To Committee on State Affairs.  
H.B. 1980, To Committee on State Affairs.  
H.B. 1981, To Committee on State Affairs.  
H.B. 1986, To Committee on Jurisprudence.  
H.B. 2008, To Committee on Jurisprudence.  
H.B. 2013, To Committee on Intergovernmental Relations.  
H.B. 2015, To Committee on Natural Resources.  
H.B. 2016, To Committee on Finance.  
H.B. 2045, To Committee on Jurisprudence.  
H.B. 2046, To Committee on Jurisprudence.  
H.B. 2066, To Committee on Economic Development.

H.B. 2067, To Committee on Economic Development.  
H.B. 2068, To Committee on Intergovernmental Relations.  
H.B. 2076, To Committee on Education.  
H.B. 2084, To Committee on Intergovernmental Relations.  
H.B. 2085, To Committee on Finance.  
H.B. 2087, To Committee on Health and Human Resources.  
H.B. 2134, To Committee on Finance.  
H.B. 2150, To Committee on State Affairs.  
H.B. 2156, To Committee on Finance.  
H.B. 2160, To Committee on Education.  
H.B. 2188, To Committee on Intergovernmental Relations.  
H.B. 2189, To Committee on Intergovernmental Relations.  
H.B. 2204, To Committee on Intergovernmental Relations.  
H.B. 2217, To Committee on Jurisprudence.  
H.B. 2218, To Committee on Jurisprudence.  
H.B. 2220, To Committee on Economic Development.  
H.B. 2244, To Committee on Jurisprudence.  
H.B. 2261, To Committee on Finance.  
H.B. 2262, To Committee on Finance.  
H.B. 2263, To Committee on Finance.  
H.B. 2264, To Committee on Finance.  
H.B. 2282, To Committee on Finance.  
H.B. 2284, To Committee on Finance.  
H.B. 2285, To Committee on Finance.  
H.B. 2302, To Committee on Intergovernmental Relations.  
H.B. 2305, To Committee on Natural Resources.  
H.B. 2322, To Committee on Intergovernmental Relations.  
H.B. 2323, To Committee on Natural Resources.  
H.B. 2335, To Committee on Intergovernmental Relations.  
H.B. 2348, To Committee on Intergovernmental Relations.  
H.B. 2355, To Committee on Finance.  
H.B. 2365, To Committee on Intergovernmental Relations.  
H.B. 2367, To Committee on Intergovernmental Relations.  
H.B. 2368, To Committee on Natural Resources.  
H.B. 2370, To Committee on Intergovernmental Relations.  
H.B. 2371, To Committee on Intergovernmental Relations.  
H.B. 2372, To Committee on Intergovernmental Relations.  
H.B. 2379, To Committee on Intergovernmental Relations.  
H.B. 2382, To Committee on Intergovernmental Relations.  
H.B. 2386, To Committee on Natural Resources.  
H.B. 2388, To Committee on Intergovernmental Relations.  
H.B. 2392, To Committee on Intergovernmental Relations.  
H.B. 2395, To Committee on Intergovernmental Relations.  
H.B. 2398, To Committee on Jurisprudence.  
H.B. 2427, To Committee on Intergovernmental Relations.  
H.C.R. 60, To Committee on Administration.  
H.C.R. 99, To Committee on Administration.  
H.C.R. 100, To Committee on Administration.  
H.C.R. 105, To Committee on Administration.  
H.C.R. 117, To Committee on Administration.  
H.C.R. 130, To Committee on Natural Resources.  
H.C.R. 147, To Committee on Administration.  
H.C.R. 152, To Committee on Administration.  
H.C.R. 159, To Committee on Administration.

**H.C.R. 162**, To Committee on Health and Human Resources.  
**H.C.R. 165**, To Committee on Administration.  
**H.C.R. 173**, To Committee on Administration.  
**H.C.R. 174**, To Committee on Administration.  
**H.C.R. 190**, To Committee on Administration.  
**H.C.R. 242**, To Committee on Education.  
**H.J.R. 72**, To Committee on State Affairs.  
**H.J.R. 65**, To Committee on State Affairs.

### RECESS

On motion of Senator Mauzy, the Senate at 12:03 o'clock p.m. took recess until 1:30 o'clock p.m. today.

### AFTER RECESS

The Senate met at 1:30 o'clock p.m. and was called to order by the President.

### REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Mauzy submitted the following report for the Committee on Jurisprudence:

### H.B. 544

### COMMITTEE SUBSTITUTE SENATE BILL 161 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 161**, Relating to public disclosure of certain information obtained by institutions of higher education.

The bill was read second time and was passed to engrossment.

### COMMITTEE SUBSTITUTE SENATE BILL 161 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 161** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent: Harris, Uribe, Vale, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0.

Absent: Harris, Uribe, Vale, Whitmire.

### SENATE BILL 472 ON SECOND READING

On motion of Senator Mauzy and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 472**, Relating to a temporary license or permit to sell beer or beer and wine for on-premises consumption.

The bill was read second time and was passed to engrossment.

**RECORD OF VOTES**

Senators Jones, Sarpalius and Howard asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**SENATE BILL 472 ON THIRD READING**

Senator Mauzy moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 472 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 5.

Yeas: Blake, Brooks, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sharp, Sims, Traeger, Truan, Uribe, Vale, Williams.

Nays: Brown, Howard, Jones, Sarpalius, Washington.

Absent: Harris, Whitmire.

The bill was read third time and was passed.

**RECORD OF VOTES**

Senators Sarpalius, Lyon, Howard and Jones asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE SENATE BILL 836 ON SECOND READING**

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 836**, Relating to the testimony in certain civil and criminal proceedings of children who are victims of sexual abuse or other offenses.

The bill was read second time.

Senator Parmer offered the following amendment to the bill:

Amend the Committee Substitute for S.B. 836 by striking the entire text after the enacting clause and substituting therefor the following:

**SECTION 1.** Chapter 38, Code of Criminal Procedure, 1965, as amended, is amended by adding Article 38.071 to read as follows:

**Art. 38.071. TESTIMONY OF CHILD WHO IS VICTIM OF OFFENSE**

**Sec. 1.** This article applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under Chapter 21, Penal Code, as amended, or Section 43.25, Penal Code, as amended, alleged to have been committed against a child 12 years of age or younger, and applies only to the statements or testimony of that child.

**Sec. 2. (a)** The recording of an oral statement of the child made before the proceeding begins is admissible into evidence if:

- (1) no attorney for either party was present when the statement was made;
- (2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- (3) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;
- (4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;

(5) every voice on the recording is identified;

(6) the person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party;

(7) the defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence; and

(8) the child is available to testify.

(b) If the electronic recording of the oral statement of a child is admitted into evidence under this section, either party may call the child to testify, and the opposing party may cross-examine the child.

Sec. 3. The court may, on the motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

Sec. 4. The court may, on the motion of the attorney for any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under Section 3 of this article may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Section 3. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) each voice on the recording is identified; and

(4) each party is afforded an opportunity to view the recording before it is shown in the courtroom.

Sec. 5. If the court orders the testimony of a child to be taken under Section 3 or 4 of this article, the child may not be required to testify in court at the proceeding for which the testimony was taken."

SECTION 2. Chapter 11, Family Code, as amended, is amended by adding Section 11.21 to read as follows:

Sec. 11.21. STATEMENT OR TESTIMONY OF CHILD. (a) This section applies only to a proceeding affecting the parent-child relationship, including but not limited to a proceeding under Title 2 or 4 of this code, in which a child 12 years of age or younger is alleged to have been abused, and applies only to the statement or testimony of that child.

(b) The recording of an oral statement of the child recorded prior to the proceeding is admissible into evidence if:

(1) no attorney for a party to the proceeding was present when the statement was made;

(2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;

(4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;

(5) each voice on the recording is identified;

(6) the person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and

(7) each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence.

(c) The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court, the finder of fact, and the parties to the proceeding. Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the equipment may be present in the room with the child during his testimony. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them.

(d) The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact, and the parties to the proceeding. Only those persons permitted to be present at the taking of testimony under Subsection (c) of this section may be present during the taking of the child's testimony. Only the attorneys for the parties may question the child, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Subsection (c). The court shall ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) each voice on the recording is identified; and

(4) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.

(e) If the testimony of a child is taken as provided by Subsection (c) or (d) of this section, the child may not be compelled to testify in court during the proceeding."

SECTION 3. Section 17.03, Family Code, is amended to read as follows:

Sec. 17.03. TAKING POSSESSION OF A CHILD WITHOUT A COURT ORDER. (a) An authorized representative of the Texas Department of Human Resources, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions and no others:

(1) upon discovery of a child in a situation of danger to the child's physical health or safety when the sole purpose is to deliver the child without unnecessary delay to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;

(2) upon the voluntary delivery of the child by the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;

(3) upon personal knowledge of facts which would lead

a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child and that there is no time to obtain a temporary restraining order or attachment under Section 17.02 of this code; [or]

(4) upon information furnished by another which has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child and that there is no time to obtain a temporary restraining order or attachment under Section 17.02 of this code;

(5) upon personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse;  
or

(6) upon information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse.

(b) When a child is taken into possession under Subdivision (3), [or] (4), (5), or (6) of Subsection (a) of this section, the person taking the child into possession shall, without unnecessary delay, cause to be filed a suit affecting the parent-child relationship and request the court to appoint a guardian ad litem for the child and to cause a hearing to be held by no later than the first working day after the child is taken into possession.

(c) The court in which the suit affecting the parent-child relationship has been filed under Subsection (b) of this section shall hold a hearing on or before the first working day after the child is taken into possession and shall make such orders as are necessary to protect the physical health and safety of the child. If the court is unavailable for a hearing on the first working day, then, and only in that event, the hearing shall be held no later than the first working day after the court becomes available, provided that the hearing is held no later than the third working day after the child is taken into possession. The hearing may be ex parte and proof may be by sworn petition or affidavit if a full adversary hearing is not practicable. If the hearing established by this subsection is not held within the time limits required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child.

(d) Unless the court at the hearing required under Subsection (c) of this section is satisfied that there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child, the court shall order the return of the child to the person entitled to possession.

(e) The court shall find that there is a continuing danger to the physical health or safety of the child as required by Subsection (d) of this section if the evidence shows that the child has been the victim of sexual abuse on one or more occasions and that there is a reasonable likelihood that the child will be the victim of sexual abuse in the future.

(f) A full adversary hearing shall be held within 10 days of the taking of the child into possession under Subdivision (3), [or] (4), (5), or (6) of Subsection (a) of this section and such orders made as are necessary for the protection of the physical health and safety of the child.

(g) [(f)] When possession of the child has been acquired under [Subdivision (2) of] Subsection (a) of this section, the person taking the child into possession shall cause to be filed a suit affecting the parent-child relationship within 60 days from the date of the taking of the child into possession and a hearing to be held thereon.

(h) [(g)] When a child is taken into possession under this section, that child shall not be held in isolation or in a jail or juvenile detention facility."

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted.

On motion of Senator Parmer and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

#### RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

#### COMMITTEE SUBSTITUTE SENATE BILL 836 ON THIRD READING

Senator Parmer moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 836 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent: Harris, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 1. (Same as previous roll call)

#### COMMITTEE SUBSTITUTE SENATE RESOLUTION 413 ON SECOND READING

Senator Sarpalius moved to suspend the regular order of business to take up for consideration at this time:

C.S.S.R. 413, Providing conditions under which a high level nuclear waste disposal site in Texas would be acceptable to the Texas Legislature.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Blake, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Truan, Uribe, Whitmire, Williams.

Nays: Brooks, Mauzy, Parker, Traeger, Vale, Washington.

Absent: Harris.

The resolution was read second time and was adopted by the following vote: Yeas 24, Nays 6.

Yeas: Blake, Brown, Caperton, Doggett, Edwards, Glasgow, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Brooks, Farabee, Mauzy, Parker, Vale, Washington.

Absent: Harris.

#### COMMITTEE SUBSTITUTE SENATE BILL 1361 ON SECOND READING



On motion of Senator Doggett and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1361**, Amending the Alcoholic Beverage Code, as amended, to add a new Chapter 17 to authorize the issuance of farm winery permits; prescribing authorized activities; prescribing an annual fee; enacting other provisions relating to the subject; and declaring an emergency.

The bill was read second time and was passed to engrossment.

#### **COMMITTEE SUBSTITUTE SENATE BILL 1361 ON THIRD READING**

Senator Doggett moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1361** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Harris.

The bill was read third time.

Senator Leedom offered the following amendment to the bill:

Change \$20.00 to \$75.00 on line 40 page 1.

The amendment was read and was adopted by unanimous consent.

On motion of Senator Doggett and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed by the following vote: Yeas 29, Nays 1.

Nays: Williams.

Absent: Harris.

#### **HOUSE BILL 658 ON SECOND READING**

On motion of Senator Howard and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 658**, Relating to the establishment of a restitution center program as an alternative to traditional methods of sentencing defendants.

The bill was read second time.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 658**, page 6, by striking subsection (h) and substituting the following new subsection (h); by adding a new subsection (i) as follows; and renumbering the present subsequent subsections:

(h) If a restitution center director is unable to find employment for a probationer, the director shall transfer the probationer to the supervision of the director of another restitution center who agrees to accept the probationer as a participant in the center's program.

(i) If a restitution center director determines that the probationer is knowingly or intentionally failing to seek employment, the director shall request the court having jurisdiction of the case to revoke the probationer's probation and transfer the probationer to the custody of the Texas Department of Corrections.

(j) A restitution center director may grant an emergency furlough to a probationer for the purpose of obtaining medical treatment or diagnosis or to attend funerals or visit critically ill relatives. A furlough for purposes other than medical purposes may not exceed 24 hours in length.

(k) A probationer participating in a program under this article shall be confined in the restitution center at all times except for:

- (1) time spent at work and traveling to and from work;
- (2) time spent attending and traveling to and from an education or rehabilitation program approved by the restitution center director;
- (3) time spent attending and traveling to and from a community-service project; and
- (4) time spent on emergency furlough.

The committee amendment was read and was adopted.

On motion of Senator Howard and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

#### HOUSE BILL 658 ON THIRD READING

Senator Howard moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 658 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Harris.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent: Harris.

#### SENATE BILL 1241 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1241**, Relating to prevention and control of spills of hazardous substances and coordination of the state response effort.

The bill was read second time.

Senator Brown offered the following committee amendment to the bill:

Amend S.B. 1241 as follows:

- 1) On page 2, strike the definition of "Hazardous substance" and substitute:

"Hazardous substance" means any substance, and shall include all substances, covered by [designated as such by the administrator of the Environmental Protection Agency pursuant to] the Federal Water Pollution Control Act and the Comprehensive Environmental Response, Compensation and Liability Act and any substance designated by the board.

- 2) On pages 5 and 6, strike Sec. 26:266(c) of the Act, and substitute:

(c) Any discharge or spill of [oil or] a hazardous substance the source of which is unknown, occurring in [coastal] waters of the state or in waters beyond

the jurisdiction of this state and which may reasonably be expected to enter waters of the state ~~[coastal water]~~ may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the board's approval, from the fund, subject to the authority of the board to seek reimbursement from an agency of the federal government, and from the responsible party if the identity of that party is discovered.

3) On page 6, on the last line of Section 4 of the bill, strike the word "resopnsible" and substitute "responsible".

The committee amendment was read.

Senator Brown offered the following amendment to the pending committee amendment:

Amend Committee Amendment No. 1 of **S.B. 1241** by striking Subsection (1) in its entirety and substituting in lieu thereof a new Subsection (1) to read as follows:

"Hazardous substance" means any substance, and shall include all substances, covered by [designated as such by the administration of the Environmental Protection Agency pursuant to] the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act, or any substance designated by the board.

The amendment to the pending committee amendment was read and was adopted.

Question recurring on adoption of the pending committee amendment as amended, the pending committee amendment as amended was adopted.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

#### **SENATE BILL 1241 ON THIRD READING**

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1241** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Harris.

The bill was read third time and was passed.

#### **COMMITTEE SUBSTITUTE SENATE BILL 397 ON SECOND READING**

Senator Doggett moved to suspend the regular order of business to take up for consideration at this time:

**C.S.S.B. 397**, Relating to the regulation of monopolies, contracts, combinations, and conspiracies in restraint of trade or commerce; containing enforcement provisions; enacting Sections 15.10, 15.11, 15.23, 15.24, 15.25, and 15.26 of Chapter 15, Title 2, Business and Commerce Code, as amended; amending Sections 15.01, 15.02, 15.03, 15.04, 15.05, 15.12, 15.13, 15.14, 15.15, 15.16, 15.20, 15.21, and 15.22 of Chapter 15, Title 2, Business and Commerce Code, as amended; repealing Sections 15.06, 15.17, 15.18, 15.19, 15.28, 15.29,

15.30, 15.31, 15.32, 15.33, and 15.34 of Chapter 15, Title 2, Business and Commerce Code; and declaring an emergency.

The motion prevailed by the following vote: Yeas 21; Nays 9.

Yeas: Brooks, Caperton, Doggett, Edwards, Farabee, Kothmann, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Nays: Blake, Brown, Glasgow, Henderson, Howard, Jones, Leedom, Sharp, Sims.

Absent: Harris.

The bill was read second time.

Senator Doggett offered the following amendment to the bill:

Floor Amendment No. 1

Amend the Committee Substitute for S.B. 397 by striking all below the enacting clause and substituting therefor the following:

SECTION 1: Sections 15.01 through 15.05 of Chapter 15, Title 2, Business and Commerce Code are amended, Section 15.06 of Chapter 15, Title 2, Business and Commerce Code is repealed, and Subchapter A of Chapter 15, Title 2, Business and Commerce Code is newly captioned as follows:

SUBCHAPTER A. GENERAL PROVISIONS AND PROHIBITED RESTRAINTS

[DEFINITIONS AND PROHIBITIONS]

Section 15.01. Title of Act [Monopoly Defined].

This Act shall be known and may be cited as the Texas Free Enterprise and Antitrust Act of 1983. [A "monopoly" is a combination or consolidation of two or more corporations effected by

[(1) bringing the direction of their affairs under common management or control to create, or where the common management or control tends to create, a trust as defined in Section 15.02 of this code; or

[(2) one corporation acquiring (in whole or part and whether directly, through trustees, or otherwise) the stock, bonds, franchise or other rights, or physical property of one or more other corporations to prevent or lessen, or where the acquisition tends to prevent or lessen, competition.]

Section 15.02. Applicability of Provisions [Trust Defined].

(a) The provisions of this Act are cumulative of each other and of any other provision of law of this State in effect relating to the same subject. Among other things, the provisions of this Act preserve the Constitutional and common law authority of the attorney general to bring actions under state and federal law.

(b) If any of the provisions of this Act is held invalid, the remainder shall not be affected as a result; nor shall the application of the provision held invalid to persons or circumstances other than those as to which it is held invalid be affected as a result. [(a) In this section, unless the context requires a different definition, "person" does not include municipal corporation.

[(b) A "trust" is a combination of capital, skill, or acts by two or more persons to

[(1) restrict, or tend to restrict, trade, commerce, aids to commerce, the preparation of tangible personal property for market or transportation, or the free pursuit of a lawful business; or

[(2) fix, maintain, increase, or reduce the price of tangible personal property, the cost of insurance, or the cost of preparing tangible personal property for market or transportation; or

- ~~[(3) prevent or lessen competition in~~
- ~~[(A) the manufacture, transportation, sale, or purchase of tangible personal property;~~
- ~~[(B) the business of insurance;~~
- ~~[(C) aids to commerce; or~~
- ~~[(D) preparing tangible personal property for market or transportation; or~~
- ~~[(4) affect, control, or establish the price of tangible personal property, or the cost of transportation, insurance, or preparing tangible personal property for market or transportation; or~~
- ~~[(5) agree~~
- ~~[(A) not to sell, dispose of, transport, or prepare tangible personal property for market or transportation, or not to make an insurance contract, at a price below a common standard or figure;~~
- ~~[(B) to maintain the price of tangible personal property, the charge for transportation or insurance, or the cost of preparing tangible personal property for market or transportation at a fixed or graded figure;~~
- ~~[(C) to affect or maintain the price of tangible personal property or the cost or transportation, insurance, or preparing tangible personal property for market or transportation in order to preclude free competition between or among themselves or others in the sale or transportation of tangible personal property, in the business of transportation or insurance, or in preparing tangible personal property for market or transportation; or~~
- ~~[(D) to pool, combine, or unite an interest they have in the sale or purchase of tangible personal property, or in the charge for transportation, insurance, or preparing tangible personal property for market or transportation, so that the price of the tangible personal property, or charge for transportation, insurance, or preparing tangible personal property for market or transportation, might be in any manner affected; or~~
- ~~[(6) regulate, fix, or limit the output of tangible personal property, or the amount of insurance undertaken, or the amount of work performed in preparing tangible personal property for market or transportation; or~~
- ~~[(7) refrain from engaging in business, or from buying or selling tangible personal property, partially or entirely in this state.]~~

Section 15.03. Definitions [Conspiracy in Restraint of Trade Defined]

Except as otherwise provided in Subsection 15.10 (a) of this Act, for purposes of this Act:

(a) The term "attorney general" means the Attorney General of Texas or any assistant attorney general acting under the direction of the Attorney General of Texas;

(b) The term "goods" means any property, tangible or intangible, real, personal, or mixed, and any article, commodity, or other thing of value, including insurance;

(c) The term "person" means a natural person, proprietorship, partnership, corporation, municipal corporation, association, or any other public or private group, however organized, but does not include the State of Texas, its departments and its administrative agencies;

(d) The term "services" means any work or labor, including without limitation work or labor furnished in connection with the sale, lease, or repair of goods; and

(e) The terms "trade" and "commerce" mean the sale, purchase, lease, exchange, or distribution of any goods or services; the offering for sale, purchase, lease, or exchange of any goods or services; the advertising of any goods or services; and all other economic activity undertaken in whole or in part for the purpose of financial gain involving or relating to any goods or services.

- ~~[(a) It is a conspiracy in restraint of trade for~~  
~~[(1) two or more persons engaged in buying or selling tangible personal property to agree not to buy from or sell to another person tangible personal property;~~  
~~[(2) two or more persons to agree to boycott, or threaten not to buy from or sell to, a person because that person buys from or sells to another person;~~  
~~[(3) two or more persons to agree to boycott, or not to deal with, the tangible personal property of another person; or~~  
~~[(4) an employer and labor union or other organization to agree or combine so that~~  
~~[(A) a person is denied the right to work for an employer because of membership or nonmembership in the labor union or other organization; or~~  
~~[(B) membership or nonmembership in the labor union or other organization is made a condition of obtaining or keeping a job with the employer.~~  
~~[(b) It is not a conspiracy in restraint of trade for~~  
~~[(1) employees to agree to quit their employment, or to refuse to deal with tangible personal property of their immediate employer, unless their refusal to deal with tangible personal property of their immediate employer is intended to induce, or has the effect of inducing, that employer to refrain from buying or otherwise acquiring tangible personal property from a person; or~~  
~~[(2) persons to agree to refer for employment a migratory farm worker who works on seasonal crops if the referral is made irrespective of whether or not the worker belongs to a labor union or other organization.]~~

~~Section 15.04. Purpose and Construction [Monopoly, Trust, and Conspiracy in Restraint of Trade Prohibited; Agreement Violating Prohibition Void]~~

The purpose of this Act is to maintain and promote economic competition in trade and commerce occurring wholly or partly within the State of Texas and to provide the benefits of that competition to consumers in the State. The provisions of this Act shall be construed to accomplish this purpose and shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes to the extent consistent with this purpose.

~~[(a) Every monopoly, trust, and conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03 of this code, respectively, is illegal and prohibited.~~

~~[(b) An agreement violating the prohibition against a monopoly, trust, or conspiracy in restraint of trade contained in Subsection (a) of this section is void and unenforceable in law or equity.]~~

~~Section 15.05. Unlawful Practices [Public Utility Prohibited from Injuring Competition or Discriminating in Rates]~~

(a) Every contract, combination, or conspiracy in restraint of trade or commerce is unlawful.

(b) It is unlawful for any person to monopolize, attempt to monopolize, or conspire to monopolize any part of trade or commerce.

(c) It is unlawful for any person to sell, lease, or contract for the sale or lease of any goods, whether patented or unpatented, for use, consumption, or resale, or fix a price for such use, consumption, or resale, or discount from or rebate upon such price, on the condition, agreement, or understanding that the purchaser or lessee shall not use or deal in the goods of a competitor or competitors of the seller or lessor, where the effect of the condition, agreement, or understanding may be to lessen competition substantially in any line of trade or commerce.

(d) It is unlawful for any person to acquire, directly or indirectly, the whole or any part of the stock or other share capital, or the assets, of any other person or persons, where the effect of such acquisition may be to lessen competition substantially in any line of trade or commerce.

This subsection shall not be construed

(1) to prohibit the purchase of stock or other share capital of another person where the purchase is made solely for investment and does not confer control of that person in a manner that could substantially lessen competition;

(2) to prevent a corporation from forming subsidiary or parent corporations for the purpose of conducting its immediately lawful business, or any natural and legitimate branch extensions of such business, or from owning and holding all or a part of the stock or other share capital of a subsidiary, or transferring all or part of its stock or other share capital to be owned and held by a parent, where the effect of such a transaction is not to lessen competition substantially;

(3) to affect or impair any right previously legally acquired; or

(4) to apply to transactions duly consummated pursuant to authority given by any statute of this state or of the United States or pursuant to authority or approval given by any regulatory agency of this state or of the United States under any constitutional or statutory provisions vesting the agency with such power.

(e) It is unlawful for an employer and a labor union or other organization to agree or combine so that

(1) a person is denied the right to work for an employer because of membership or nonmembership in the labor union or other organization; or

(2) membership or nonmembership in the labor union or other organization is made a condition of obtaining or keeping a job with the employer.

(f) It is not unlawful for

(1) employees to agree to quit their employment, or to refuse to deal with tangible personal property of their immediate employer, unless their refusal to deal with tangible personal property of their immediate employer is intended to induce, or has the effect of inducing, that employer to refrain from buying or otherwise acquiring tangible personal property from a person, or

(2) persons to agree to refer for employment a migratory worker who works on seasonal crops if the referral is made irrespective of whether or not the worker belongs to a labor union or organization.

(g) Nothing in this section shall be construed to prohibit activities that are exempt from the operation of the federal antitrust laws, 15 U.S.C. Section 1 et seq. Furthermore, nothing in this section shall apply to actions required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.

(h) In any lawsuit alleging a contract, combination, or conspiracy to fix prices, evidence of uniform prices alone shall not be sufficient to establish a violation of Section 15.05 (a).

[(a) In this section, unless the context requires a different definition, "utility" means an individual, company, partnership, or corporation in the business of transporting or selling natural gas, electric current and power, telephone or telegraph service, or a similar public utility.

[(b) No utility may intentionally prevent or hinder legitimate competition among utilities. No utility doing business in more than one municipality or county may discriminate between or among persons in rates, prices, or kinds of service for the purpose of injuring a competitor or preventing or hindering competition among utilities.

[(c) For purposes of this section,

[(1) "subsidiary utility" means a utility that is controlled by another individual, company, partnership, or corporation;

[(2) "controlling company" means an individual, company, partnership, or corporation that controls a subsidiary utility;

[(3) the act of a subsidiary utility is the act of its controlling company and of every other subsidiary utility of that controlling company;

~~[(4) the act of a controlling company is the act of each of its subsidiary utilities; and~~

~~[(5) the costs of production and transportation shall be considered in determining whether or not discrimination in rates, prices, or kinds of service exists.~~

~~[(d) A utility's reduction of rates or prices below those required by an ordinance or proposed in a petition is prima facie evidence of an intent to prevent competition or injure a competitor if~~

~~[(1) a municipality has required by ordinance, or its governing body, a majority of its citizens, or a majority of the residents of a community served by the utility has requested by petition, that the utility lower the rates or prices charged for its services;~~

~~[(2) the petition proposes rates or prices for the utility to charge which the municipality, its citizens, or the residents believe to be fair and reasonable;~~

~~[(3) the utility first refuses or fails to reduce its rates or prices;~~

~~[(4) within 12 months after the refusal or failure another utility begins, or attempts to begin, serving the municipality or community; and~~

~~[(5) the reduction is made after the other utility began, or attempted to begin, serving the municipality or community.~~

~~[(e) It is not prima facie evidence of an intent to prevent competition or injure a competitor for a utility to reduce its rates or prices to the level of those charged by the municipality or a competing utility, even though the reduced rates or prices are below those required by the ordinance or requested in the petition.~~

~~[(f) A utility adjudged guilty of violating a provision of Subsection (b) of this section forfeits its charter or articles of incorporation (or permit or certificate of authority) and right to do business in this state. The attorney general on learning of the violation shall file suit, or institute quo warranto proceedings, in a district court in any county in this state to obtain the forfeiture.]~~

#### ~~[Section 15.06 Publication Tying Arrangement Prohibited~~

~~[(a) No wholesale distributor or news agency, or its agent or employee, may require or demand that a retailer purchase or accept from the wholesale distributor or news agency a particular publication so that the retailer can obtain another publication from the wholesale distributor or news agency.~~

~~[(b) A wholesale distributor or news agency, or its agent or employee, who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than six months or by a fine of not more than \$1,000 or by both.]~~

SECTION 2: Sections 15.10 and 15.11 of Chapter 15, Title 2, Business and Commerce Code are enacted, Sections 15.12, 15.13, 15.14, and 15.16 of Chapter 15, Title 2, Business and Commerce Code are amended, and Sections 15.15, 15.17, 15.18, and 15.19 of Chapter 15, Title 2, Business and Commerce Code are repealed as follows:

### **SUBCHAPTER B. PROCEDURE AND EVIDENCE**

#### Section 15.10. Civil Investigative Demands

(a) Definitions. For purposes of this section:

(1) The terms "antitrust investigation" and "investigation" mean any inquiry conducted by the attorney general for the purpose of ascertaining whether any person is or has been engaged in, or is actively preparing to engage in, activities which may constitute an antitrust violation;

(2) The term "antitrust violation" means any act or omission in violation of any of the prohibitions contained in Section 15.05 of this Act or in violation of any of the antitrust laws set forth in Subsection (a) of Section 12 of Title 15, the United States Code;

(3) The terms "civil investigative demand" and "demand" mean any demand issued by the attorney general under Subsection (b) of this section;



(4) The terms “documentary material” and “material” include the original or any identical copy and all non-identical copies of any contract, agreement, book, booklet, brochure, pamphlet, catalog, magazine, notice, announcement, circular, bulletin, instruction, minutes, agenda, study, analysis, report, graph, map, chart, table, schedule, note, letter, telegram, telephone or other message, product of discovery, magnetic or electronic recording, and any other written, printed, or recorded matter;

(5) The term “person” means a natural person, proprietorship, partnership, corporation, municipal corporation, association, or any other public or private group, however organized, and includes any person acting under color or authority of State law; and

(6) The term “product of discovery” includes without limitation the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature; and any digest, analysis, selection, compilation, or other derivation thereof; and any index or manner of access thereto.

(b) Authority to Issue Demand. Whenever the attorney general has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information relevant to a civil antitrust investigation, the attorney general may, prior to the institution of a civil proceeding, issue in writing and serve upon such person a civil investigative demand requiring the person to produce such documentary material for inspection and copying, to answer in writing written interrogatories, to give oral testimony, or to provide any combination of such material, answers, and testimony; provided, however, that the attorney general may not issue and serve a demand for documentary material upon a proprietorship or partnership whose annual gross income does not exceed five million dollars.

(c) Contents of demand.

(1) Each demand shall describe the nature of the activities that are the subject of the investigation and shall set forth each statute and section of that statute that may have been or may be violated as a result of such activities. Each demand shall advise the person upon whom the demand is to be served that the person has the right to object to the demand as provided for in this section.

(2) Each demand for production of documentary material shall:

(A) describe the class or classes of material to be produced with reasonable specificity so that the material demanded is fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material is to be produced; and

(C) identify the individual or individuals acting on behalf of the attorney general to whom the material is to be made available for inspection and copying.

(3) Each demand for answers to written interrogatories shall:

(A) propound the interrogatories with definiteness and certainty;

(B) prescribe a date or dates by which answers to interrogatories shall be submitted; and

(C) identify the individual or individuals acting on behalf of the attorney general to whom the answers should be submitted; and

(4) Each demand for the giving of oral testimony shall

(A) prescribe a reasonable date, time, and place at which the testimony shall begin; and

(B) identify the individual or individuals acting on behalf of the attorney general who will conduct the examination.

(5) No demand for any product of discovery may be returned until 20 days after the attorney general serves a copy of the demand upon the person from whom the discovery was obtained.

(d) Protected Material and Information.

(1) A demand may require the production of documentary material, the submission of answers to written interrogatories, or the giving of oral testimony only if the material or information sought would be discoverable under the Texas Rules of Civil Procedure or other state law relating to discovery.

(2) Any demand for a product of discovery supercedes any inconsistent order, rule, or provision of law (other than this subchapter) preventing or restraining disclosure of such product of discovery; provided, however, that voluntary disclosure of a product of discovery under this section does not constitute a waiver of any right or privilege, including any right or privilege which may be invoked to resist discovery of trial preparation materials, to which the person making the disclosure may be entitled.

(e) Service; Proof of Service.

(1) Service of any demand or of any petition filed under Subsection (f) or (h) of this section may be made upon any natural person by delivering a duly executed copy of the demand or petition to the person to be served or by mailing such copy by registered or certified mail, return receipt requested, to such person at his or her residence or principal office or place of business.

(2) Service of any demand or of any petition filed under Subsection (f) or (h) of this section may be made upon any person other than a natural person by delivering a duly executed copy of the demand or petition to the person's principal office or place of business or to any partner, executive officer, or authorized agent of the person, or by mailing such copy by registered or certified mail, return receipt requested, to the person at the person's principal office or place of business.

(3) A verified return by the individual serving any demand or any petition filed under Subsection (f) or (h) setting forth the manner of service shall be proof of such service. In the case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand or petition.

(f) Petition For Order Modifying or Setting Aside Demand. At any time before the return date specified in a demand, or within 20 days after the demand has been served, whichever period is shorter, the person who has been served (and, in the case of a demand for a product of discovery, the person from whom the discovery was obtained) may file a petition for an order modifying or setting aside the demand in the district court in the county of the person's residence or principal office or place of business or in a district court of Travis County. Any such petition shall specify each ground upon which the petitioner relies in seeking the relief sought. The petition may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. The petitioner shall serve a copy of the petition upon the attorney general. The attorney general may submit an answer to the petition. In ruling on the petition, the court shall presume, absent evidence to the contrary, that the attorney general issued the demand in good faith and within the scope of his or her authority.

(g) Compliance With Demand.

(1) A person on whom a demand is served shall comply with the terms of the demand unless otherwise provided by court order.

(2) The time for compliance with the demand in whole or in part shall not run during the pendency of any petition filed under Subsection (f) of this section, provided, however, that the petitioner shall comply with any portions of the demand not sought to be modified or set aside.

(3) Documentary Material.

(A) Any person upon whom any demand for the production of documentary material has been duly served under this section shall make such

material available to the attorney general for inspection and copying during normal business hours on the return date specified in the demand at the person's principal office or place of business, or as otherwise may be agreed upon by the person and the attorney general. The attorney general shall bear the expense of any copying. The person may substitute copies for originals of all or part of the requested documents so long as the originals are made available for inspection. The person shall indicate in writing which if any of the documents produced contain trade secrets or confidential information.

(B) The production of documentary material in response to any demand shall be made under a sworn certificate, in such form as the demand designates, by a natural person having knowledge of the facts and circumstances relating to such production, to the effect that all of the requested material in the possession, custody, or control of the person to whom the demand is directed has been produced.

(4) Interrogatories.

(A) Each interrogatory in any demand duly served under this section shall be answered separately and fully in writing, unless it is objected to, in which case the basis for the objection shall be set forth in lieu of an answer. The person shall indicate in writing which if any of the answers contain trade secrets or confidential information.

(B) Answers to interrogatories shall be submitted under a sworn certificate, in such form as the related demand designates, by a natural person having knowledge of the facts and circumstances relating to the preparation of the answers, to the effect that all of the requested information in the possession, custody, control, or knowledge of the person to whom the demand is directed has been set forth fully and accurately.

(5) Oral Examination.

(A) The examination of any person pursuant to a demand for oral testimony duly served under this section shall be taken before any person authorized to administer oaths and affirmations by the laws of Texas or the United States. The person before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his or her direction and in his or her presence, record the witness' testimony. At the expense of the attorney general, the testimony shall be taken stenographically and may be transcribed.

(B) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the county where the person resides, is found, transacts business, or in such other place as may be agreed upon by the person and the attorney general.

(C) Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel. Counsel may advise such person in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question arising in connection with the examination.

(D) The individual conducting the examination on behalf of the attorney general shall exclude from the place of examination all other persons except the person being examined, the person's counsel, the counsel of the person to whom the demand has been issued, the person before whom the testimony is to be taken, any stenographer taking the testimony, and any persons assisting the individual conducting the examination.

(E) During the examination, the person being examined or his or her counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person

is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Neither such person nor his or her counsel shall otherwise object to or refuse to answer any question or interrupt the oral examination. If the person refuses to answer any question, the attorney general may petition the district court in the county where the examination is being conducted for an order compelling the person to answer the question.

(F) If and when the testimony has been fully transcribed, the person before whom the testimony was taken shall promptly transmit the transcript of the testimony to the witness and a copy of the transcript to the attorney general. The witness shall have a reasonable opportunity to examine the transcript and make any changes in form or substance accompanied by a statement of the reasons for such changes. The witness shall then sign and return the transcript, unless he or she is ill, cannot be found, refuses to sign, or in writing waives the signing. If the witness does not sign the transcript within 15 days of receiving it, the person before whom the testimony has been given shall sign it and state on the record the reason, if known, for the witness' failure to sign. The officer shall then certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness and promptly transmit a copy of the certified transcript to the attorney general.

(G) Upon request, the attorney general shall furnish a copy of the certified transcript to the witness.

(H) The witness shall be entitled to the same fees and mileage that are paid to witnesses in the district courts of Texas.

(h) Failure To Comply With Demand.

(1) Petition for Enforcement. Whenever any person fails to comply with any demand duly served on such person under this section, the attorney general may file in the district court in the county in which the person resides, is found, or transacts business, and serve on the person, a petition for an order of the court for enforcement of this section. If the person transacts business in more than one county, the petition shall be filed in the county of the person's principal office or place of business in the state or in any other county as may be agreed upon by the person and the attorney general.

(2) Deliberate Noncompliance. Any person, who, with intent to avoid, evade, or prevent compliance, in whole or part, with a demand issued under this section, removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material, or otherwise provides inaccurate information, is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000 or by confinement in county jail for not more than one year, or by both.

(i) Disclosure and Use of Material and Information.

(1) Except as provided in this section or ordered by a court for good cause shown, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies or contents thereof, shall be available for examination or used by any person without the consent of the person who produced the material, answers, or testimony, and, in the case of any product of discovery, of the person from whom the discovery was obtained.

(2) The attorney general may make available for inspection or prepare copies of documentary material, answers to interrogatories, or transcripts of oral testimony in his or her possession as he or she determines may be required by the state in the course of any investigation or a judicial proceeding in which the state is a party.

(3) The attorney general may make available for inspection or prepare copies of documentary material, answers to interrogatories, or transcripts of oral

testimony in his or her possession as he or she determines may be required for official use by any officer of the State of Texas or of the United States charged with the enforcement of the laws of the State of Texas or the United States; provided that any material disclosed under this subsection may not be used for criminal law enforcement purposes.

(4) Upon request, the attorney general shall make available copies of documentary material, answers to interrogatories, and transcripts of oral testimony for inspection by the person who produced such material or information (and, in the case of a product of discovery, the person from whom the discovery was obtained) or by any duly authorized representative of the person, including his or her counsel.

(5) Not later than 15 days prior to disclosing any documentary material or answers to written interrogatories designated as containing trade secrets or confidential information under this subsection, the attorney general shall notify the person who produced the material of the attorney general's intent to make such disclosure. The person who produced the documentary material or answers to written interrogatories may petition a district court in any county of this state in which the person resides, does business, or maintains its principal office for a protective order limiting the terms under which the attorney general may disclose such trade secrets or confidential information.

(6) Upon written request, the attorney general shall return documentary material produced under this section in connection with an antitrust investigation to the person who produced it whenever

(A) any case or proceeding before any court arising out of the investigation has been completed, or

(B) the attorney general has decided, after completing an examination and analysis of such material, not to institute any case or proceeding before a court in connection with the investigation.

(j) Jurisdiction. Whenever any petition is filed in the district court in any county as provided for in this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order or orders required to implement the provisions of this section. Any final order is subject to appeal. Failure to comply with any final order entered by a court under this section is punishable by the court as a contempt of the order.

(k) Nonexclusive Procedures. Nothing in this section shall preclude the attorney general from using procedures not specified in the section in conducting an antitrust investigation.

#### Section 15.11. Party to Suit May Subpoena Witness

(a) A party to a suit brought to enforce any of the prohibitions in Section 15.05 of this Act, or to enforce the laws conserving natural resources, may apply to the clerk of the court in which the suit is pending to subpoena a witness located anywhere in the state. On receipt of the application, the clerk shall issue the subpoena applied for but may not issue more than five subpoenas each for state witnesses and defense witnesses without first obtaining the court's written approval.

(b) A witness subpoenaed under Subsection (a) of this section who fails to appear and testify in compliance with the subpoena is guilty of contempt of court and may be fined not more than \$100 and attached and imprisoned in the county jail until he or she appears in court and testifies as required.

#### Section 15.12. Additional Procedures [Declaratory Judgment Action].

In addition to the procedures set forth in this subchapter, the attorney general and any other party to a suit brought by the attorney general to enforce any of the prohibitions in Section 15.05 of this Act may request discovery and production of documents and other things, serve written interrogatories, and subpoena and

depose witnesses in accordance with the applicable provisions of the Texas Rules of Civil Procedure and other state law relating to discovery. [(a) A person (other than a foreign corporation not having a permit or certificate of authority to do business in this state) uncertain of whether or not his action or proposed action violates or will violate the prohibition contained in Section 15.04 of this code may file suit against the state for declaratory judgment, citing this section as authority, in one of the Travis County district courts.

[(b) Citation and all process in the suit shall be served on the attorney general, who shall represent the state. The petition shall describe in detail the person's action, or proposed action, and all other relevant facts, and the court in its declaratory judgment shall fully recite the action, or proposed action, and other facts considered.

[(c) A declaratory judgment granted under this section which rules that action or proposed action does not violate the prohibition contained in Section 15.04 of this code

[(1) shall be strictly construed and may not be extended by implication to an action or fact not recited in the judgment;

[(2) does not bind the state with reference to a person not a party to the suit in which the judgment was granted; and

[(3) does not estop the state from subsequently establishing a violation of the prohibition contained in Section 15.04 of this code based on an action or fact not recited in the declaratory judgment, which action or fact, when combined with an action or fact recited in the judgment, constitutes a violation of the prohibition contained in Section 15.04 of this code.

[(d) A person filing suit under this section shall pay all costs of the suit.]

Section 15.13. Immunity from Criminal Prosecution [Attorney General's Assistants]

(a) Application by Attorney General. If a person upon whom an investigative demand or request for discovery has been properly served pursuant to Section 15.10, 15.11, or 15.12 of this Act refuses or is likely to refuse to comply with the demand or request on the basis of his or her privilege against self-incrimination, the attorney general may apply to a district court in the county in which the person is located for an order granting the person immunity from prosecution and compelling the person's compliance with the demand or request.

(b) Order Granting Immunity and Compelling Testimony and Production. Upon receipt of an application filed under Subsection (a) of this section, the court shall issue an order granting the person immunity from prosecution and requiring the person to comply with the demand or request notwithstanding his or her claim of privilege. The order shall explain the scope of protection afforded by it.

(c) Effectiveness of Order. An order may be issued under Subsection (b) of this section prior to the assertion of the privilege against self-incrimination but shall not be effective until the person to whom it is directed asserts the privilege and is informed of the order.

(d) Compliance with Order. A person who has been informed of an order issued by a court under this section compelling his or her testimony or production of material may not refuse to comply with the order on the basis of his or her privilege against self-incrimination. A person who complies with the order may not be criminally prosecuted for or on account of any act, transaction, matter, or thing about which he or she is ordered to testify or produce unless the alleged offense is perjury or failure to comply with the order. Failure to comply with the order may be punished by the court as contempt of the order. [An assistant attorney general, county attorney, district attorney, or criminal district attorney acting under the attorney general's direction has the powers and duties of the attorney general set out in Sections 15.14-15.17 of this code.]

Section 15.14. Priority of Civil Suits [Discovery Procedure]

A civil suit filed under Section 15.20 of this Act shall have priority over all other court business, civil or criminal, except a criminal prosecution in which the defendant is in jail. [(a) If the attorney general believes that a person knows of a violation of the prohibition contained in Section 15.04 of this code, he may apply to the county judge or to a justice of the peace in the county where the person is located to compel the examination of the person.

[(b) Upon receipt of the application, the county judge or justice of the peace shall

[(1) summon the person as in a criminal case;

[(2) administer an oath to him;

[(3) transcribe his statement;

[(4) have him swear to and sign his statement; and

[(5) deliver his statement to the attorney general.

[(c) A person summoned under Subsection (b) of this section is guilty of contempt of court if he fails to

[(1) appear in response to the summons;

[(2) make a sworn statement of the facts he knows; or

[(3) sign his written statement.

[(d) A person guilty of contempt under Subsection (c) of this section may be

[(1) fined not more than \$100; and

[(2) attached and imprisoned in the county jail until he makes a full statement about the facts he knows.]

Section 15.15. [Party to Suit May Subpoena Witness]

[(a) A party to a suit brought to enforce the prohibition contained in Section 15.04 of this code, or to enforce the laws conserving natural resources, may apply to the clerk of the court in which the suit is pending to subpoena a witness located anywhere in the state. On receipt of the application, the clerk shall issue the subpoena applied for but may not issue more than five subpoenas each for state witnesses and defense witnesses without first obtaining the court's written approval.

[(b) A witness subpoenaed under Subsection (a) of this section who fails to appear and testify in compliance with the subpoena is guilty of contempt of court and may be

[(1) fined not more than \$100; and

[(2) attached and imprisoned in the county jail until he appears in court and testifies about the facts he knows.]

Section 15.16. Declaratory Judgment Action [State May Compel Attendance of Defendant and Production of Documentary Evidence]

(a) A person (other than a foreign corporation not having a permit or certificate of authority to do business in this state) uncertain of whether or not his or her action or proposed action violates or will violate the prohibitions contained in Section 15.05 of this Act may file suit against the state for declaratory judgment, citing this section as authority, in one of the Travis County district courts.

(b) Citation and all process in the suit shall be served on the attorney general, who shall represent the state. The petition shall describe in detail the person's action, or proposed action, and all other relevant facts, and the court in its declaratory judgment shall fully recite the action, or proposed action, and other facts considered.

(c) A declaratory judgment granted under this section which rules that action or proposed action does not violate the prohibitions contained in Section 15.05 of this Act

(1) shall be strictly construed and may not be extended by implication to an action or fact not recited in the judgment;

(2) does not bind the state with reference to a person not a party to the suit in which the judgment was granted; and

(3) does not estop the state from subsequently establishing a violation of the prohibitions contained in Section 15.05 of this Act based on an action or fact not recited in the declaratory judgment, which action or fact, when combined with an action or fact recited in the judgment, constitutes a violation of the prohibitions contained in Section 15.05 of this Act.

(d) A person filing suit under this section shall pay all costs of the suit.

[(a) In this section, unless the context requires a different definition,

[(1) "witness" includes

[(A) director, officer, agent, and employee of a defendant corporation or joint stock association;

[(B) member of a defendant partnership; and

[(C) individual defendant; and

[(2) "court" includes special commissioner appointed under Section 15.19 of this code.

[(b) The attorney general in a suit brought to enforce the prohibition contained in Section 15.04 of this code, or to enforce the laws regulating corporations, may request the appearance and testimony of a witness, and his production of documentary evidence, at a place in or out of the state by written application to the court in term time or vacation.

[(c) The attorney general in the application shall

[(1) state the name and address of each witness whose testimony he wishes to take;

[(2) describe in a general way the documentary evidence he wishes produced; and

[(3) state the place where and the time when the witness is to appear and testify or produce documentary evidence.

[(d) On receipt of the attorney general's application, the court shall immediately issue a written notice, directed to the witness and defendant or his attorney, requiring the defendant or his attorney to notify the witness of the place where and the time when he is to appear and testify or produce documentary evidence.

[(e) A defendant or his attorney notified by written notice issued under Subsection (d) of this section

[(1) that a witness is wanted to testify shall immediately inform the witness of the place where and time when he is required to appear and testify, and

[(2) to produce documentary evidence shall produce the evidence if it belongs to the defendant or is under his control at the place and time specified in the notice.

[(f) A witness notified under Subsection (c) of this section shall remain in attendance before the court from day to day until discharged by the court.]

[Section 15.17. Sanction for Failure to Appear or Produce Documentary Evidence

[(a) The court on motion of the attorney general and after a hearing shall strike all of the defendant's pleadings and render default judgment against him if a witness fails or refuses to appear and testify or produce documentary evidence in compliance with a written notice issued under Section 15.16(d) of this code.

[(b) A defendant's pleadings may not be stricken, nor default judgment rendered against him, if the defendant

[(1) files with the court a sworn statement that

[(A) a witness' failure or refusal to attend and testify was due to no act or fault of the defendant;

[(B) documentary evidence demanded was not in defendant's possession or control and could not be produced; and



~~[(C) defendant complied with the written notice to the best of his ability; and  
(2) the court after a hearing is satisfied that the defendant's statement is true.~~

~~[(c) The court after the hearing provided in Subsection (b) (2) of this section may make additional orders concerning evidence that it considers necessary.~~

~~[Section 15.18. Service of Written Notice~~

~~[(a) Written notice issued under Section 15.16(d) of this code must allow the witness named in the notice at least 10 days after the day of service before he is required to appear and testify or produce documentary evidence in compliance with the written notice.~~

~~[(b) Written notice issued under Section 15.16(d) of this code may be served, and the return completed for it, by a sheriff, constable, or a disinterested person competent to make oath of the fact of service. The person serving the written notice shall deliver a copy to the person to be served, or to his attorney, shall endorse (either on the original notice or on an attachment to it) the date, time, and manner of service and the name of the person served, and shall sign the return. If the person serving the written notice is not a sheriff or constable, he shall swear to the return before someone authorized to administer an oath.]~~

~~[Section 15.19. Special Commissioner Appointed to Take Evidence~~

~~[(a) A party to a suit brought to enforce the prohibition contained in Section 15.04 of this code, or to enforce the laws regulating corporations, may apply in term time or vacation to the court in which the suit is pending for appointment of a special commissioner to take evidence at a location in or out of the state as designated in the application. Upon receipt of the application, the court shall appoint a disinterested person as special commissioner, who shall qualify by taking the constitutional oath of office.~~

~~[(b) A special commissioner appointed under Subsection (a) of this section may~~

~~[(1) issue~~

~~[(A) a written notice under Section 15.16(d) of this code, or a subpoena, to compel the attendance and testimony of a witness or the production of documentary evidence; and~~

~~[(B) an attachment for a witness;~~

~~[(2) punish for contempt of court to the extent provided by law for the court appointing him;~~

~~[(3) administer an oath to a witness; and~~

~~[(4) have a witness examined orally and his testimony transcribed; sworn to, and signed by the witness.~~

~~[(c) The special commissioner shall~~

~~[(1) note and reserve each objection to the evidence taken for the court hearing the suit and may not exclude evidence;~~

~~[(2) with all convenient speed certify and return the evidence taken to the court appointing him.~~

~~[(d) Evidence taken by a special commissioner is admissible in the suit for which it was taken, subject to objection made at the time it is offered in the suit.~~

~~[(c) When filed with the court appointing him, a special commissioner's certificate, showing the failure or refusal of a witness to appear and testify or produce documentary evidence, is prima facie evidence of the failure or refusal.~~

~~[(f) A special commissioner appointed under Subsection (a) of this section is entitled to be reimbursed for his actual travel expenses and to the fee allowed by law to a notary public for taking a deposition. A special commissioner's travel expenses and fee are taxed as costs in the suit and collected as in a civil case.]~~

SECTION 3: Sections 15.20, 15.21 and 15.22 of Chapter 15, Title 2, Business and Commerce Code are amended, Sections 15.24 through 15.26 of

Chapter 15, Title 2, Business and Commerce Code are enacted, Sections 15.28 through 15.34 of Chapter 15, Title 2, Business and Commerce Code are repealed, and Subchapter C of Chapter 15, Title 2, Business and Commerce Code is newly captioned as follows:

**SUBCHAPTER C. ENFORCEMENT** ~~[CIVIL AND CRIMINAL PENALTIES]~~

**Section 15.20. Civil Suits by the State** ~~[Immunity of State's Witness]~~

(a) Suit to Collect Civil Fine. The attorney general may file suit in district court in Travis County, or in any county in the State of Texas in which any of the named defendants resides, does business, or maintains its principal office, on behalf of the State of Texas to collect a civil fine from any person, other than a municipal corporation, whom the attorney general believes has violated any of the prohibitions in Subsection (a) or (b) of Section 15.05 of this Act. Every person adjudged to have violated any of these prohibitions shall pay a fine to the State not to exceed one million dollars if a corporation, or, if any other person, one hundred thousand dollars.

(b) Suit for Injunctive Relief. The attorney general may file suit against any person, other than a municipal corporation, in district court in Travis County, or in any county in the State of Texas in which any of the named defendants resides, does business, or maintains its principal office, on behalf of the State of Texas to enjoin, temporarily or permanently, any activity or contemplated activity that violates or threatens to violate any of the prohibitions in Section 15.05 of this Act. In any such suit, the court shall apply the same principles as those generally applied by courts of equity in suits for injunctive relief against threatened conduct that would cause injury to business or property. In any such suit in which the State substantially prevails on the merits, the State shall be entitled to recover the cost of suit.

Upon finding a violation of the prohibition against acquiring the stock, share capital, or assets of a person in Subsection (d) of Section 15.05 of this Act, the court shall, upon further finding that no other remedy will eliminate the lessening of competition, order the divestiture or other disposition of the stock, share capital, or assets and shall prescribe a reasonable time, manner, and degree of the divestiture or other disposition.

(c) No suit filed under Subsection (a) or (b) of this section may be transferred to another county except on order of the court.

(d) Nothing in this section shall be construed to limit the Constitutional or common law authority of the Attorney General to bring actions under state and federal law. [A person testifying or producing documentary evidence for the state in a discovery procedure under Section 15.14 of this code, in a suit brought to enforce the prohibition contained in Section 15.04 of this code, or in a suit brought to enforce the laws regulating corporations, is immune from indictment and prosecution for anything about which he truthfully testifies or produces documentary evidence.]

**Section 15.21. Suits by Injured Persons or Governmental Entities.** ~~[Cumulative Effect of Subchapter]~~

(a) Suit to Recover Damages.

(1) Any person or governmental entity, including the State of Texas and any of its political subdivisions or tax-supported institutions, whose business or property has been injured by reason of any conduct declared unlawful in Subsection (a), (b), or (c) of Section 15.05 of this Act may sue any person, other than a municipal corporation, in district court in any county of this state in which any of the named defendants resides, does business, or maintains its principal office, or in any county in which any of the named plaintiffs resided at the time the cause of action or any part thereof arose, and shall recover threefold the

damages sustained, interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment (the rate of such interest to be in accordance with Texas law regarding post-judgment interest rates and the amount of interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust in the circumstances), and the cost of suit, including a reasonable attorney's fee; provided, however, that if the trier of fact finds that the unlawful conduct was willful or flagrant, it shall increase the recovery to threefold the damages sustained and the cost of suit, including a reasonable attorney's fee.

(2) Any person or governmental entity who obtains a judgment for damages under 15 U.S.C. Section 15 or any other provision of federal law comparable to this subsection may not recover damages in a suit under this subsection based on substantially the same conduct that was the subject of the federal suit.

(3) On a finding by the court that an action under this section was groundless and brought in bad faith or for the purpose of harassment, the court shall award to the defendant or defendants a reasonable attorney's fee, court costs, and other reasonable expenses of litigation.

(b) Suit for Injunctive Relief. Any person or governmental entity, including the State of Texas and any of its political subdivisions or tax-supported institutions, whose business or property is threatened with injury by reason of anything declared unlawful in Subsection (a), (b), or (c) of Section 15.05 of this Act may sue any person, other than a municipal corporation, in district court in any county of this state in which any of the named defendants resides, does business, or maintains its principal office, or in any county in which any of the named plaintiffs resided at the time the cause of action or any part thereof arose, to enjoin the unlawful practice temporarily or permanently. In any such suit, the court shall apply the same principles as those generally applied by courts of equity in suits for injunctive relief against threatened conduct that would cause injury to business or property. In any such suit in which the plaintiff substantially prevails on the merits, the plaintiff shall be entitled to recover the cost of suit, including a reasonable attorney's fee based on the fair market value of the attorney services used.

(c) Copies of Complaints to Attorney General. Any person or governmental entity filing suit under this section shall mail a copy of the complaint to the Attorney General of Texas. The attorney general, as representative of the public, may intervene in the action by filing a notice of intervention with the court before which the action is pending and serving copies of the notice on all parties to the action. The penalty for failure to comply with this subsection shall be a monetary fine not in excess of \$200. The attorney general may file suit to recover the fine on behalf of the State in the district court in which the private suit has been brought. [The provisions of Sections 15.14 and 15.16-15.20 of this code

[(1) are cumulative of and do not repeal other law relating to securing evidence; and

[(2) provide additional means of securing evidence to enforce the prohibition contained in Section 15.04 of this code and the laws regulating corporations.]

#### Section 15.22. Criminal Suits [Witness Fees]

(a) Every person, other than a municipal corporation, who acts in violation of any of the prohibitions in Subsection (a) or (b) of Section 15.05 of this Act shall be deemed guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not more than 3 years, or by a fine not to exceed \$5,000, or by both.

(b) A district attorney or criminal district attorney may file criminal suit to enforce the provisions in Subsection (a) of this section in district court in Travis

County or in any county in which any of the acts that allegedly have contributed to a violation of any of the prohibitions in Subsections (a) and (b) of Section 15.05 of this Act are alleged to have occurred or to be occurring. [(a) A witness residing outside the county in which a suit is pending, before he need comply with a subpoena issued under Section 15.15(a) of this code, must be tendered by the party calling him his anticipated expenses, not to exceed four cents a mile and \$2 a day, for going to, attending, and returning from court. In the case of a state witness, these expenses shall be paid in the same manner as in a felony case.

[(b) A person complying with a written notice or summons issued under Section 15.16(d) or 15.14 of this code, respectively, is entitled to four cents a mile and \$1 a day for going to, attending, and returning from court. A person shall file a sworn claim for his mileage and per diem with the court, and the mileage and per diem shall be taxed as costs and collected as in a civil case.]

#### Section 15.24. Judgment in Favor of the State Evidence in Action

A final judgment rendered in an action brought under Section 15.20 or 15.22 of this Act to the effect that a defendant or defendants have violated any of the prohibitions in Section 15.05 of this Act is prima facie evidence against such defendant or defendants in any action brought under Section 15.21 as to all matters with respect to which the judgment would be an estoppel between the parties to the suit. This section shall not apply to consent judgments or decrees entered before any testimony has been taken.

#### Section 15.25. Limitation of Actions.

(a) Any suit to recover damages under Section 15.21 of this Act is barred unless filed within four years after the cause of action accrued or within one year after the conclusion of any action brought by the State under Section 15.20 or 15.22 of this Act based in whole or in part on the same conduct, whichever is longer. For the purpose of this subsection, a cause of action for a continuing violation is considered to accrue at any and all times during the period of the violation.

(b) No suit under this Act shall be barred on the grounds that the activity or conduct complained of in any way affects or involves interstate or foreign commerce. It is the intent of the Legislature to exercise its powers to the full extent consistent with the Constitutions of the State of Texas and the United States.

#### Section 15.26. Jurisdiction

Whenever any suit is filed in the district court in any county in the State of Texas as provided for in Section 15.20, 15.21, or 15.22 of this Act, the court shall have jurisdiction and venue to hear and determine the matter presented and to enter any order or orders required to implement the provisions of this Act. Once suit is properly filed, it may be transferred to another county upon order of the court for good cause shown."

#### [Section 15.28. Definitions

[In Sections 15.29-15.31 of this code, unless the context requires a different definition;

[(1) "domestic corporation" means a corporation organized under the law of this state;

[(2) "foreign corporation" means a corporation organized under the law of another state or country; and

[(3) "successor" means a corporation to which another corporation has transferred its property and business or which has assumed payment of its obligations.]

#### [Section 15.29. Charter of Domestic Corporation Forfeited

[(a) When he believes the public interest requires it, the attorney general shall file suit to forfeit the charter or articles of incorporation of a domestic corporation which has violated or is violating the prohibition contained in Section

15.04 of this code. The attorney general may file suit under this subsection in a district court in any county in the state.

~~[(b) To the extent consistent with this chapter, the law governing quo warranto applies to a suit filed under Subsection (a) of this section.~~

~~[(c) If he finds the public interest requires it, in a suit filed under Subsection (a) of this section, the court may forfeit the charter or articles of incorporation of a domestic corporation adjudged guilty of violating the prohibition contained in Section 15.04 of this code. The forfeiture is in addition to other penalties provided by law.~~

~~[(d) The successor to a domestic corporation whose charter or articles of incorporation has been forfeited under Subsection (c) of this section may not incorporate or do business in this state.]~~

~~[Section 15.30.—Foreign Corporation Enjoined From Doing Business~~

~~[(a) If a foreign corporation has violated or is violating the prohibition contained in Section 15.04 of this code, the attorney general may file suit in a district court in Travis County to permanently enjoin the foreign corporation from doing business or incorporating in this state.~~

~~[(b) If the court finds the public interest requires it, in a suit filed under Subsection (a) of this section, it shall permanently enjoin from doing business or incorporating in this state a foreign corporation adjudged guilty of violating the prohibition contained in Section 15.04 of this code. The injunction is in addition to other penalties provided by law.~~

~~[(c) The successor to a foreign corporation permanently enjoined from doing business in this state may not incorporate or do business in this state.]~~

~~[Section 15.31.—Reinstatement of Enjoined Foreign Corporation~~

~~[(a) Five or more years after being enjoined from doing business in this state under Section 15.30(b) of this code, a foreign corporation or its successor may apply for reinstatement to the district court originally granting the injunction. The corporation shall have a copy of the application, and all other papers, served on the attorney general, who shall represent the state in the reinstatement proceeding.~~

~~[(b) On receipt of the application, the court shall hold a hearing on it, may compel the production of documentary evidence, and may appoint a special commissioner under Section 15.19 of this code to take testimony either in or out of the state.~~

~~[(c) The court after the hearing may modify the original injunction and permit the foreign corporation or its successor to incorporate or secure a certificate of authority to do business in this state, if the corporation or its successor has established that the enjoined corporation~~

~~[(1) fully obeyed the injunction and paid all fines adjudged against it;~~

~~[(2) has organized or reorganized its affairs so that it may do business in this state without violating a state law; and~~

~~[(3) is not itself violating, and is not connected with a person who is violating, the prohibition contained in Section 15.04 of this code.~~

~~[(d) If the court modifies the original injunction in a reinstatement proceeding, it shall retain jurisdiction over the proceeding. The attorney general for good cause shall apply to the court to set aside the modification. If the attorney general establishes that the reinstated foreign corporation or its successor has violated or is violating, or is connected with a person who is violating, the prohibition contained in Section 15.04 of this code, the court shall set aside the modification and permanently enjoin the foreign corporation or its successor from doing business or incorporating in this state. If the modification is set aside, all proceedings based on it are void.~~

~~[(c) The clerk of the court shall forward to the secretary of state a certified copy of the court's judgment in a reinstatement proceeding, and the secretary of state shall comply with the judgment.~~

~~[(f) A foreign corporation or its successor seeking reinstatement shall pay all expenses of the proceeding, including a reasonable attorney's fee fixed by the court. The attorney general shall deposit the attorney's fee in the state treasury to the credit of the general revenue fund.~~

~~[(g) A foreign corporation or its successor adjudged guilty a second time of violating the prohibition contained in Section 15.04 of this code may not apply for reinstatement under Subsection (a) of this section.]~~

~~[Section 15.32—Monetary Penalty~~

~~[(a) A person adjudged guilty of violating the prohibition contained in Section 15.04 of this code shall pay a fine to the state of not less than \$50 nor more than \$1,500 for each day of violation. The attorney general, or a district, criminal district, or county attorney acting under his direction, shall represent the state in a suit filed to collect this fine.~~

~~[(b) Each district court in this state has jurisdiction and venue over a suit filed under Subsection (a) of this section, and once suit is filed, it may not be transferred to another county except on order of the court.~~

~~[(c) A district, criminal district, or county attorney representing the state in a suit filed to enforce the prohibition contained in Section 15.04 of this code, or to collect a fine under Subsection (a) of this section, is entitled to a fee equal to~~

~~[(1) 10 percent of the amount collected up to and including \$50,000, and~~

~~[(2) five percent of the amount collected over \$50,000, or~~

~~[(#) one half of the percentages specified in Subdivisions (1) and (2) of this subsection, if the suit is compromised before final judgment in the trial court.~~

~~[(d) The fee specified in Subsection (c) of this section may be retained by the district, criminal district, or county attorney collecting it and is in addition to other fees allowed him by law.~~

~~[(c) A district, criminal district, or county attorney representing the state, who ceases to hold office before a fine is collected, is entitled to share equally with his successor in the fee specified in Subsection (c) of this section. A contract hiring special counsel to assist in representing the state is binding on the district, criminal district, or county attorney making the contract and subsequently retiring from office.]~~

~~[Section 15.33—Criminal Penalties~~

~~[(a) A person may not agree to form, form, be a party to the formation of, or aid a monopoly, trust, or conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03(a) (1)-(3) of this code, respectively.~~

~~[(b) A person acting as a member, agent, employee, officer, director, or stockholder of a business, firm, corporation, or association may not~~

~~[(1) sell, purchase, contract, do business or any other act for, or form or operate, the business, firm, corporation, or association in violation of the prohibition against a monopoly, trust, and conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03(a) (1)-(3) of this code, respectively, or~~

~~[(2) in this state, with an intent to drive out competition or financially injure a competitor,~~

~~[(A) sell a product below the cost of its manufacture or production,~~

~~[(B) give away a product, or~~

~~[(C) give a secret rebate on the sale price of a product.~~

~~[(c) A person who forms outside this state a monopoly, trust, or conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03(a) (1)-(3) of this code, respectively, may not, with respect to the monopoly, trust, or conspiracy in restraint of trade,~~

~~[(1) cause or permit it to do business, operate, or have an effect in this state,~~

~~[(2) aid it to do business in this state or otherwise violate the prohibition against a monopoly, trust, or conspiracy in restraint of trade, as defined in Sections 15.01, 15.02, and 15.03(a) (1)-(3) of this code, respectively, or~~

~~[(3) buy, sell, or contract for it.~~

~~[(d) A person who violates a provision of Subsection (a), (b), or (c) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years.~~

~~[(c) A criminal prosecution under this section may be brought in Travis or any other county in which a monopoly, trust, or conspiracy in restraint of trade is allegedly operating.]~~

~~[Section 15.34—Exemption From Criminal Penalties~~

~~[Section 15.33 of this code does not apply to agricultural products or livestock while in the hands of the producer or raiser.]~~

SECTION 4. The importance of this legislation and the crowded condition of the calendar in both Houses create an emergency, making it an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended and that this Act become effective immediately upon its passage. Accordingly, the Constitutional Rule is suspended and this Act shall be effective immediately upon its passage.

The amendment was read.

Senator Glasgow offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to C.S.S.B. 397 by substituting “may” for “shall” on page 33 line 11 between the words “Court” and “issue”.

The amendment to Floor Amendment No. 1 was read and was adopted.

Question recurring on adoption of Floor Amendment No. 1 as amended, Floor Amendment No. 1 as amended was adopted.

On motion of Senator Doggett and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by the following vote: Yeas 23, Nays 7.

Yeas: Brooks, Caperton, Doggett, Edwards, Farabee, Glasgow, Kothmann, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Nays: Blake, Brown, Henderson, Howard, Jones, Leedom, Sims.

Absent: Harris.

**HOUSE JOINT RESOLUTION 1 ON SECOND READING**

Senator Farabee moved to suspend the regular order of business to take up for consideration at this time:

**H.J.R. 1**, Proposing a constitutional amendment to allow for the assignment of income for the enforcement of court-ordered child support payments.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Uribe, Vale, Whitmire, Williams.

Nays: Mauzy, Truan, Washington.

Absent: Harris.

The resolution was read second time.

Senator Farabee offered the following amendment to the resolution:

Amend **H.J.R. 1** by amending the first sentence in **SECTION 2** to read as follows:

"This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 8, 1983."

The amendment was read and was adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

The resolution as amended was passed to third reading.

**RECORD OF VOTES**

Senators Mauzy, Washington and Truan asked to be recorded as voting "Nay" on the passage of the resolution to third reading.

**HOUSE JOINT RESOLUTION 1 ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.J.R. 1** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Uribe, Vale, Whitmire, Williams.

Nays: Mauzy, Truan, Washington.

Absent: Harris.

The resolution was read third time and was passed by the following vote: Yeas 27, Nays 3. (Same as previous roll call)

**REASON FOR VOTE**

Texas, perhaps more than any other state, has closely guarded the rights of individuals against governmental intrusion, and its constitutional prohibition of wage garnishment reflects this tradition. The Declaration of Rights opening the



Constitution of the Republic of Texas of 1836 guaranteed that "no person shall be imprisoned for debt." Each subsequent Texas constitution contained similar provisions; and in reaction to broad extensions of creditors' remedies at the time, and recognizing the need to protect the common man from skillful high-pressure manipulations of profiteering creditors, the framers of the Texas Constitution of 1876 included a constitutional prohibition against wage garnishment.

Today that need still exists. The United States Supreme Court and several Congressional and private studies have recognized strong policy reasons to strictly limit, if not wholly prohibit, this particular remedy. Bankruptcy rates have been shown closely related to wage garnishment (which may explain the fact that Texas repeatedly has one of the lowest per capita personal bankruptcy rates in the nation). A former U.S. Secretary of Labor estimated that in 1967 200,000 jobs were lost due to the effects of garnishment. Wage garnishment has an undeniably detrimental effect on employer-employee relationships. Garnishment encourages over-extension of credit by marginal high-risk lenders. Garnishment is largely unnecessary due to other creditor remedies. Garnishment is used chiefly against the poor and uneducated.

Regardless of the promises made by legislators who may or may not determine future legislation, there is a real and understandable danger that allowing this first break in the constitutional prohibition against garnishment will open the door to whichever coalitions can nurse their own garnishment exceptions into law. And even admitting the insufficiency of current sanctions against parents who refuse to make court-ordered child support payments, there is nevertheless no need for the drastic step of a constitutional amendment. House Bill 2 by Rep. Oliveira addresses the problem much more cleanly, providing for voluntary assignment of wages for child support. Not only does such an approach preserve the citizen's basic right of autonomy, but it also makes the existing framework of enforcement significantly more realistic. Under H.B. 2, the threat of jail which is now a counterproductive last resort would become a powerful incentive to recalcitrant parents. H.B. 2, in fact, does precisely what the proposed constitutional amendment claims to do, but without risking the kinds of wage garnishment which creditor interests strongly and continually support.

MAUZY  
TRUAN  
WASHINGTON

#### HOUSE BILL 2 ON SECOND READING

Senator Farabee moved to suspend the regular order of business to take up for consideration at this time:

**H.B. 2**, Relating to the enforcement of court-ordered child support.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Uribe, Vale, Whitmire, Williams.

Nays: Truan, Washington.

Absent: Harris.

The bill was read second time.

Senator Farabee offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **H.B. 2** by deleting **SECTIONS 4 and 5** and substituting in lieu thereof the following:

**SECTION 6.** This Act takes effect immediately, except that Section 2 takes effect on adoption of the constitutional amendment proposed by **H.J.R. 1**, 68th Legislature, Regular Session, 1983.

**SECTION 7.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The committee amendment was read and was adopted.

Senator Farabee offered the following committee amendment to the bill:  
**Committee Amendment No. 2**

Amend **SECTION 2 of H.B. 2** by amending subsection (p) to read as follows:

**“(p) Involuntary Assignment of Earnings**

(1) The court of continuing jurisdiction may order an involuntary assignment of earnings for child support upon proper motion, notice to all parties and a hearing.

(2) An involuntary assignment of earnings may be ordered if the court finds that the total amount of child support in arrears was equal to or in excess of the amount due for a two month period at the time the motion for involuntary assignment was filed with the court.

(3) In determining the amount of the assignment, the court may consider, in addition to other relevant factors, the amount of support in arrears as well as the amount of payments to become due in the future.

(4) A motion for an involuntary assignment of earnings may be filed by

(a) the person entitled to receive support for the benefit of a child or

(b) the Attorney General if the State is providing assistance to or services for the child or

(c) the court of continuing jurisdiction

(5) An assignment ordered under this subsection shall conform to all other provisions of this section.”

The committee amendment was read.

Senator Farabee offered the following amendment to Committee Amendment No. 2:

**Floor Amendment No. 1**

Amend Committee Amendment No. 2 to **H.B. 2** by striking the word “conform” in subdivision (5) and substituting in lieu thereof the words “be subject”.

The amendment to Committee Amendment No. 2 was read and was adopted.

Question recurring on adoption of Committee Amendment No. 2 as amended, Committee Amendment No. 2 as amended was adopted.

Senator Farabee offered the following committee amendment to the bill:

## Committee Amendment No. 3

Amend **H.B. 2** by adding new SECTIONS 4 and 5 as follows and renumbering existing SECTIONS 4 and 5 accordingly:

SECTION 4. Section 14.03, Family Code, is amended to read as follows:

Sec. 14.03. **POSSESSION OF AND ACCESS TO CHILD.** (a) If a managing conservator is appointed, the court may appoint one or more possessory conservators and set the time and conditions for possession of or access to the child by the possessory conservators and others. If ordered, the times and conditions for possession of or access to the child must be specific and expressly stated in the order, unless either party shows good cause why specific orders would not be in the best interest of the child.

(b) The court by local rule may establish and publish schedules, guidelines, and formulas for use in determining the times and conditions for possession of and access to a child.

(c) On the appointment of a possessory conservator, the court shall prescribe the rights, privileges, duties, and powers of the possessory conservator.

(d) ~~(c)~~ The court may not deny possession of or access to a child to either or both parents unless it finds that parental possession or access is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child.

(e) ~~(d)~~ If the court finds that it is in the best interests of the child as provided in Section 14.07 of this code, the court may grant reasonable access rights to either the maternal or paternal grandparents of the child; and to either the natural maternal or paternal grandparents of a child whose parent-child relationship has been terminated or who has been adopted before or after the effective date of this code. This [Such] relief may [shall] not be granted unless one of the child's legal parents at the time the relief is requested is the child's natural parent. The court may issue any necessary orders to enforce the [said] decree.

SECTION 5. Section 14.05(a), Family Code, is amended to read as follows:

(a) The court may order either or both parents to make periodic payments of a lump-sum payment, or both, for the support of the child until he is 18 years of age in the manner and to the persons specified by the court in the decree. In addition, the court may order a parent obligated to support a child to set aside property to be administered for the support of the child in the manner and by the persons specified by the court in the decree. In determining the amount of child support, the court shall consider all appropriate factors, including but not limited to the needs of the child, the ability of the parents to contribute to the child's support, any financial resources available for the support of the child, and any schedules, guidelines, and formulas adopted by the court. The court by local rule may establish and publish schedules, guidelines, and formulas to be used by the court in determining the amount and manner of child support.

The committee amendment was read and was adopted.

Senator Farabee offered the following amendment to the bill:

## Floor Amendment No. 2

Amend **H.B. 2** by inserting the word "voluntarily" between the words "may" and "assign" on page 2, line 43.

The amendment was read and was adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

### **HOUSE BILL 2 ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 2 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Uribe, Vale, Whitmire, Williams.

Nays: Truan, Washington.

Absent: Harris.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2. (Same as previous roll call)

### **HOUSE BILL 1608 REREFERRED**

On motion of Senator Jones and by unanimous consent, H.B. 1608 was withdrawn from the Committee on State Affairs and rereferred to the Committee on Economic Development.

### **SENATE RULE 103 SUSPENDED**

On motion of Senator Mauzy and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider H.B. 2008 today.

### **MEMORIAL RESOLUTIONS**

S.R. 625 - By Brooks: Memorial resolution for E. L. Harbuck.

S.R. 629 - By Glasgow: Memorial resolution for Mrs. Jimmie Tippit.

### **WELCOME AND CONGRATULATORY RESOLUTIONS**

H.C.R. 215 - (McFarland): Designating May as American Airlines Month.

H.C.R. 245 - (Traeger): Honoring Ted Flores.

S.C.R. 118 - By Caperton: Designating May 29, 1983, as Texas Crawfish Day.

S.R. 624 - By Uribe: Extending congratulations to Ms. Phyllis Griggs.

S.R. 626 - By Caperton: Extending congratulations to Sister M. Augustine.

S.R. 627 - By Howard: Commending Mrs. Mabel Morriss for her outstanding service to the city of Douglassville.

S.R. 630 - By Doggett: Inviting Admiral Bob Inman to address the Texas Senate on May 18, 1983.

S.R. 631 - By Jones: Extending congratulations to Miss Tommie Clack.

### **ADJOURNMENT**

On motion of Senator Mauzy, the Senate at 3:20 o'clock p.m. adjourned until 10:00 o'clock a.m. tomorrow.

**APPENDIX**

Signed by Governor  
(May 16, 1983)

**S.C.R. 79**  
**S.C.R. 96**

**SEVENTIETH DAY**

(Wednesday, May 18, 1983)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment and was called to order by Senator Vale.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Absent-excused: Harris.

A quorum was announced present.

The Reverend Ed Wilder, Trinity United Methodist Church, Austin, offered the invocation as follows:

I've been asked to dedicate this prayer to Marsha Franklin, who will be going into surgery this afternoon at Seton Hospital.

Lord, You have called these people together to do Your work in this political arena. Grant everyone here the wisdom of Solomon, the patience of Job, and the unending compassion of Hosea. Save them from the petty aggravations of slow elevators, broken vending machines, and busy phones. Set their eyes on the far horizon, lighten their load and quicken their step as they move toward establishing a just society. Protect them from the evil one and guide them in all things, I ask in the name of Jesus Christ, Amen.

(President in Chair)

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**LEAVE OF ABSENCE**

Senator Harris was granted leave of absence for today on account of important business on motion of Senator Blake.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 18, 1983

**HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE**

**SIR:** I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 70**, Relating to the classification of the murder of a child in the course of committing aggravated sexual abuse as a capital offense.